



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC LRE**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") in which the Tenant seeks:

- cancellation of a One Month Notice for Cause dated April 29, 2022 ("1 Month Notice") pursuant to section 47; and
- an order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to section 70.

The Landlord and Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and her evidence (collectively the "NDRP Package") on the Landlord by registered mail on April 14, 2022. The Tenant submitted into evidence a copy of the Canada Post receipt and the tracking number for service of the NDRP Package on the Landlord. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

The Landlord state she served his evidence on the Tenant in-person on August 9, 2022. The Tenant acknowledged she received the Landlord's evidence. I find the Landlord's evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Severance and Dismissal of Tenant's Claim

In addition to seeking cancellation of the 1 Month Notice, the Tenant made a claim for an order to suspend or set conditions on the Landlord's right to enter the rental unit ("Other Claim"). Rule 2.3 of the RoP states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

Pursuant to Rule 2.3 of the RoP, I sever the Other Claim from the Application. I will dismiss the Other Claim with leave to reapply if I cancel the 1 Month Notice. However, if I do not cancel the 1 Month Notice and grant the Landlord an Order of Possession, I will dismiss the Other Claim without leave to reapply.

Preliminary Matter – Removal of Respondent from the Application

At the outset of the hearing, I noted a person party ("CG") was listed as a respondent in the Application who was not listed as a tenant in the tenancy agreement. The Tenant stated CG is her son who lives with her. The Tenant stated CG, a minor. The Tenant requested I amend the Application to remove CG as a respondent in the Application.

Pursuant to Rule 2.3 of the RoP, I order the Application to be amended by removing CG as a respondent in the Application.

Preliminary Matter – Correction of Rental Address

At the outset of the hearing, I noted that the addresses provided in the tenancy agreement, 1 Month Notice and the Application for the rental address were all different from each other. The Landlord provided the correct address of the rental unit and requested that I amend the Application and the 1 Month Notice. Section 68 of the Act states:

- 68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
 - (b) in the circumstances, it is reasonable to amend the notice.

The 1 Month Notice did not provide the correct address of the rental unit. The Tenant received the 1 Month Notice and knew, or should have known, the correct address of the rental unit. As such, I order the 1 Month Notice to be amended to state the correct address of the rental unit.

Pursuant to Rule 2.3 of the RoP, I order the Application to be amended to state the correct address of the rental unit.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the 1 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a signed copy of the tenancy agreement ("Tenancy Agreement") dated May 14, 2016 between her and the Landlord. The parties agreed the tenancy commenced on June 1, 2016 for a fixed term ending June 1, 2017, with rent of \$1,300.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$650.00. The Landlord stated he received the security deposit from the Tenant and that he was holding it in trust for the Tenant.

The Landlord stated he served the 1 Month Notice on the Tenant in-person on April 29, 2022. The Tenant acknowledged she received the 1 Month Notice. I find the 1 Month Notice was served on the Tenant in accordance with section 88 of the Act. The 1 Month Notice stated the reason for ending the tenancy was:

Tenant has allowed an unreasonable number of occupants in the unit/site/property/park

The 1 Month Notice provided the following details for ending the tenancy:

There is a tenancy agreement that states that only 3 specific people are allowed to live in the suite. However, a 4th unauthorized person by the name of [TM] has been living there on and off for the last 6 months. He stays 2-3 weeks at a time, leaves for a couple of days, then returns for another 2-3 weeks.

The Landlord stated paragraph 8 of the Tenancy Agreement states:

8. Names of who will live in unit.

[Name of Tenant]

[BG]

[CG]

The Tenant stated BG was her daughter son and CG was her son. The Landlord stated only the Tenant, BG and CG were the only persons permitted to live in the rental unit. The Landlord stated the Tenant was in breach of the Tenancy Agreement because TM was also occupying the rental unit. In addition, the Landlord argued that four people was an unreasonable number of occupants in the rental unit and, as a result, the Tenant was in breach of the Act.

The Tenant acknowledged that TM is her boyfriend and he has been staying in the rental unit on and off since May 14, 2016. The Tenant stated TM has his own residence in a different city. The Tenant stated her daughter moved out of the rental unit three or four years ago and has her own living accommodations. The Tenant stated the rental unit has three bedrooms, one of which she and her boyfriend use, one which is used by her son and the other is still set up for her daughter so that she can stay with her if she likes. The Tenant stated she had disputed a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities. The Tenant testified the arbitrator who heard the application for that dispute resolution proceeding stated, in part:

In this case, the tenancy agreement names the tenants for this tenancy; however, it does not state that additional occupants are not allowed or that the Landlord will charge \$200.00 extra for such additional occupants. As a result of these considerations of the evidence and the authorities before me, I find that the rent increase was illegal and that the Tenant did not fail to pay rent when she refused to pay for this increase.

Analysis

Subsection 47(1)(c) and section 47(4) of the Act state:

- 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

- (c) there are an unreasonable number of occupants in a rental unit;

[...]

- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

[emphasis in italics added]

The Landlord stated he served the 1 Month Notice on the Tenant in-person on April 29, 2022. Pursuant to section 47(4) of the Act, the Tenant had 10 days, or until May 9, 2022, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the Residential Tenancy Branch indicate the Tenant made the Application on April 30, 2022. As such, the Tenant made the Application within the 10-day dispute period required by section 47(4) of the Act.

The Landlord stated the Tenant was in breach of the Tenancy Agreement because TM was not authorized to live in the rental unit. The 1 Month Notice did not state the Tenant had breached a material term that the Tenant had not correct within a reasonable time after the Landlord gave her notice of the breach. As such, the Landlord cannot seek to end the tenancy on the basis there has been a breach of a material term because the Landlord did not indicate that this was a cause to end the tenancy in the 1 Month Notice.

The Landlord stated there were an unreasonable number of occupants in the rental unit. The Tenant stated there were three bedrooms in the rental unit. The Landlord did not provide any explanation for why he believed that four occupants in a three-bedroom rental unit, where the two occupants slept in one bedroom, constituted an unreasonable number of occupants. I find that four occupants in the three-bedroom rental unit is not an unreasonable number of occupants. Based on the foregoing, I find the Landlord has not established that the Tenant has breached subsection 47(1)(c) of the Act. As such, I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the Act.

Conclusion

The 1 Month Notice is cancelled. The tenancy continues until ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 1, 2022

Residential Tenancy Branch