



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT, CNC, OLC, MNDCT, LRE, PSF

Introduction

This hearing dealt with the tenant's application pursuant to to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 11:10 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenant confirmed that they understood.

The tenants provided sworn, undisputed testimony that they had served the landlord with their Dispute Resolution Package on May 12, 2022. In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's application. Neither party submitted any written evidence for this hearing.

The tenant confirmed receipt of the landlord's 1 Month Notice dated April 30, 2022, which was posted in the tenant's doorway. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the landlord's 1 Month Notice, 3 days after posting.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recovery of his filing fee for this application from the landlord?

Background and Evidence

The tenants provided the following undisputed testimony as the landlord did not attend.

This month-to-month tenancy began in April 2021, with monthly rent currently set at \$700.00, payable on the first of the month. The landlord had collected a security and pet damage deposit in the amounts of \$350.00 each deposit.

The tenant filed this application to dispute the 1 Month Notice which the tenant received on April 30, 2022. Neither party submitted a copy of the 1 Month Notice for this hearing.

The tenant also requested additional orders, including an order for the landlord to give proper notice before entering the rental unit, and for the landlord to replace the broken refrigerator. The tenant also requested the return of their deposits if the tenancy was ended in accordance with the *Act*.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant received the 1 Month Notice on April 30, 2022, and filed their application on May 2, 2022. Therefore, the tenant was within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord has not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Furthermore, as neither party submitted a copy of the 1 Month Notice, I am unable to confirm whether the 1 Month Notice complies with the form and content requirements under section 52 of the *Act*. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

I have noted the tenant's concerns about the broken refrigerator and the right of the tenant to proper notice before entering the tenant's rental unit. I remind the landlord of the following sections of the *Act* below:

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Residential Tenancy Policy Guideline #7 provides further clarification on the definition of “reasonable purpose” which includes:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

The policy guideline also sets out the procedure in the circumstances where a party does not agree with the landlord’s notice of entry.

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions.

Section 32(1) and (2) of the Act outlines the following obligations of the landlord to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 27 Terminating or restricting services or facilities, states as follows about the termination of services or facilities:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I order that the landlord comply with the above sections of the Act. If the landlord fails to do so, the tenant is at liberty to apply for further orders as allowed under the Act.

The tenant also requested the return of their deposits. As this tenancy has not come to an end, I dismiss the remainder of the tenant's application without leave to reapply.

I allow the tenant to recover the filing fee for this application.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. The 1 Month Notice dated April 30, 2022 is of no force or effect. This tenancy continues until ended in accordance with the Act.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

The remainder of the application is dismissed with leave to reapply.

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 28, 2022

Residential Tenancy Branch