



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice), issued by the landlord, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and to recover the cost of the filing fee.

The tenant, a resident of the rental unit, CB, and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application, with or without leave to reapply. I find the tenant's additional request for an order for the landlord's compliance is not sufficiently related to the most urgent claim of disputing the Notice. As a result, I only consider the tenant's request to cancel the 1 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

Additionally, although CB is listed as a tenant on the application, the written tenancy agreement shows only MD as the tenant. I therefore have removed CB from the cover page as a tenant.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice to end the tenancy?

Should the Notice be cancelled or enforced?

Background and Evidence

This tenancy began on or about February 15, 2022, for a monthly rent of \$1,600. The tenant said he moved into the rental unit on February 12, 2022. Filed in evidence was the written tenancy agreement.

Filed in evidence was the Notice. The Notice was dated May 5, 2022, for an effective move-out date of June 30, 2022. The tenant confirmed receipt of the Notice.

Pursuant to Rule 6.6 and 7.18, the landlords proceeded first in the hearing to support the Notice.

The reasons listed on the Notice to end tenancy were:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
- the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant of the landlord.
- the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Causes section of the Notice, the landlord wrote:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

1. Landlord's agent, [REDACTED] had a verbal agreement with the landlord to board her two horses and to use the stables for feeding her horses on the property. On or about February 13, 2022, the tenant, [REDACTED] began texting landlord's agent to provide him a release of liability for her horses and reprimanded her for lying and manipulating him, ordering her and her horses off the property by the next day. Landlord asked the tenant [REDACTED] to desist from ordering the agent and her horses off the property. The agent, [REDACTED] complied with providing a release of liability to tenant, [REDACTED] within two hours of his request. Thereafter, on or about February 14, 2022, [REDACTED] ordered [REDACTED] to forthwith remove her horses and hay from the tenancy by the next day at 5pm or he would forcibly remove them and turn them loose, and for her to not enter the property again. At great upset and expense, [REDACTED] removed her two horses and 2 tons of hay, some of which was frozen to the land, and the tenant ejected her from the property.

2. The tenant, [REDACTED] was verbally abusive through multiple text messages that left the other tenant, [REDACTED] in shock and tears, and fearing for her safety such that she was emotionally upset, no longer able to perform the duties required of her as agent of the property. The landlord requested of the tenant, [REDACTED] to work out an agreement with the agent, which he had first agreed to and then unilaterally, without the landlord or the other tenant's permission, forcibly caused the removal of [REDACTED] her horses, and her personal property from the stables area.

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord provided the following testimony and references to their documentary evidence:

The landlord filed in evidence written Declarations, which the landlord, FA, said at the hearing would comprise his position on this matter.

The landlords live in the USA.

The landlord said that the residential property was an 11 acre, rural property with a stable and buildings. The landlord submitted that the tenant was informed that he contracted with their agent, MK, to maintain her two horses on the property with their express permission and was free to use the stable to store hay. The landlord submitted that the tenant was fine with that initially, although he preferred not to have them there.

The landlord submitted that the tenant was told he could negotiate with MK to locate the horses to a different sector of the property so that he would not see them.

The landlord submitted that the tenant sent MK texts, saying he “forbade” her from coming onto the property except to remove her horses and hay. The horses were ultimately removed and are not currently on the property. The landlord submitted that the tenant has refused MK back on the property even though she was there with the landlord’s permission and is their agent.

Tenant’s response –

The tenant said that the leased property includes the stables, barns and corrals and were informed that it would be their choice of having MK’s horses on the property and that the horses would be there at the behest of the tenants. The tenant said that landlord KS was not happy with MK or her husband and specifically said they did not have an agreement with MK.

The tenant said that the text messages in evidence did not show anything of what they were accusing him of and that MK said she did not intend on moving her horses.

The tenant said he was not clear if MK was even an agent for the landlord as KS said that she was not happy with her.

In response, KS said that it was expressly disclosed to the tenant that MK would be an agent and that they had an agreement with MK that she could keep her horses on the property.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

Rule 7.17 states the arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence.

Although the landlord provided a significant amount of evidence, I find not all evidence is related to the issues at hand, which is what the landlord has listed in the Details of Causes section of the 1 Month Notice. I therefore do not consider or refer to unrelated evidence.

These Details show that the Notice was issued due to the landlords' allegations surrounding the matter of MK's horses being boarded on the residential property and the tenant's insistence that they be removed from the residential property.

While the landlords' asserted they had an agreement with MK she could keep her horses on the residential property, I do not find that agreement incorporated in the written tenancy agreement or otherwise in writing. Apart from that, according to the written tenancy agreement, the tenant leased the property located at the named address, which I find includes the 11 acres and structures, granting the tenant the exclusive use of the leased premises, other than common areas.

While the landlords have the right to appoint an agent, I find the landlords submitted insufficient evidence to show that MK was appointed to act as the landlords' agent in this tenancy.

Even if that was the case, I find the tenant asking, or even demanding, that MK remove her horses from the property, for which he had the responsibility for maintaining, does not rise to such a level as to constitute conduct that would be the requirement of "significantly interfered" with or "unreasonably disturbed" or "seriously jeopardized".

Therefore, I find these reasons cannot form the basis to end a tenancy.

I find the three other boxes marked on the 1 Month Notice were unrelated to the Details of Causes listed on the landlord's Notice.

The landlord has not identified to which material term the tenant allegedly breached.

As to the landlords' allegations that the tenant engaged in illegal activities, I find the landlord failed to state to which illegal activity they referred or how such an illegal activity impacted the tenancy or enjoyment, security, safety or physical well-being of the landlord or their lawful right.

As a result of the above, I find the landlord has submitted insufficient evidence to support any causes listed on the 1 Month Notice dated May 5, 2022.

Therefore, I grant the tenant's application and **order** the One Month Notice dated May 5, 2022, is cancelled and of no force or effect. The tenancy continues until it may otherwise legally end under the Act.

I also award the tenant recovery of his filing fee of \$100, pursuant to section 72(1) of the Act.

I grant the tenant a one-time rent reduction in the amount of \$100 to satisfy their monetary award. The tenant should advise the landlord when they make this deduction, and the landlord may not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent when the tenant makes the \$100 authorized deduction.

Information for the landlord –

The landlord is informed that they may not avoid or contract outside the Act or the Residential Tenancy Regulations. In reviewing the landlords' written tenancy agreement, I find several terms are outside what is required or allowed under the Act. One such provision is the requirement of paying a 10%, or \$160 late fee. Under the Regulations, a landlord may not charge more than \$25 for a late payment of rent or bank charge. Although I found many other terms were in question, I do not specifically address all others. It is up to the landlord to provide a written tenancy agreement that complies with the requirements of the Act and Regulations.

The parties are informed that should they have any questions about the enforceability of any term in the written tenancy agreement, they should contact staff with the RTB for further information.

Conclusion

The tenant's application has been granted as I have ordered that the landlord's One Month Notice dated May 5, 2022, is ordered cancelled and of no force or effect. The tenancy continues until it may otherwise legally end under the Act.

The tenant has been granted recovery of the filing fee of \$100 and he has been granted a one-time rent reduction in this amount.

The tenant's application seeking an order requiring the landlord to comply with the Act, regulations, or tenancy agreement was severed, and 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 11, 2022

Residential Tenancy Branch