



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT, CNC, OLC**

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by an advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the relief sought? If not is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following background facts. This fixed-term tenancy began on April 15, 2022 pursuant to a signed tenancy agreement. The fixed-term continues until April 30, 2023 after which the tenancy will continue on a month-to-month basis. Monthly rent for the tenancy is \$2,200.00 payable on the first of each month. The rental unit is a suite in a detached home with the landlord residing in the other portion of the property.

The signed tenancy agreement indicates that water, cablevision, electricity, internet and heat are included in the rent but also contains handwritten notes which the landlord says indicates the tenant is responsible for ½ of some utilities and 80% of others.

The landlord issued a 2 Month Notice dated May 29, 2022 with an effective date of August 31, 2022. The reason given on the notice for the tenancy to end is that the landlord intends to occupy the rental unit. The landlord testified that they have a friend residing in another province who will relocate and occupy the landlord's suite. The landlord says they will then move into the rental unit. The landlord submitted into evidence a letter from the landlord's friend stating their intention.

The parties agree that there have been ongoing conflicts between them regarding the presence of the tenant's dog but the landlord submits that this did not influence their decision to issue the 2 Month Notice.

The landlord subsequently issued 1 Month Notices on August 4, 2022 and August 9, 2022 and 10 Day Notices on July 3, 2022 and August 3, 2022. The landlord said that the 10 Day Notices and 1 Month Notice of August 4, 2022 were issued in error and withdrew them at the hearing.

The 1 Month Notice of August 9, 2022 provides the reason for the tenancy to end is:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

Under the details of the cause the landlord cites instances of late payment of utilities. The landlord testified that they believe that late payment is a significant interference or unreasonable disturbance giving rise to a basis for the tenancy to end.

The parties agree that the landlord makes demand for utilities by issuing the invoices from the utility company and expecting payment within days together with the next monthly rent payment. The landlord submits that they are not withholding the invoices but providing them to the tenant immediately. The landlord says that failure to pay the full amount of the utilities together with the next payment of rent, regardless of whether 30 days has passed, constitutes a late payment.

Analysis

Section 49(8) provides that a tenant may dispute a notice to end tenancy for landlord's use of property within 15 days after being served with the notice. In the present case the parties agree the tenant was served with the notice on May 29, 2022 and filed their application for dispute on June 7, 2022. I therefore find the tenant was within the statutory timeline to dispute the 2 Month Notice.

Section 49(2)(a)(iii) provides that the effective date of a notice for a fixed term tenancy agreement can be no earlier than the date specified as the end of the tenancy in the agreement. Section 53 provides that incorrect effective dates are automatically changed to the earliest date permitted under the Act. Accordingly, I find that that corrected effective date of the 2 Month Notice is April 30, 2023.

When a tenant applies to dispute a notice to end tenancy the onus is on the landlord to demonstrate, on a balance of probabilities, the reasons for the tenancy to end.

Based on the totality of the evidence I find the landlord has not met their evidentiary onus. I find the landlord's submissions regarding their intentions to be weak, with little documentary support and their stated plan raises questions that have not been reasonably addressed.

The landlord gave little information regarding their friend who will occupy the landlord's suite, making vague mention of "tough times". The landlord testified that they would move into the rental unit, transporting all of their personal belongings, furniture and materials to provide a vacant suite for their friend from out of province to occupy. I find the landlord's explanation to be of limited persuasive effect. Their submissions contain little concrete information regarding what their friend intends to do for employment, what ties they have to the community or why they do not simply share the landlord's suite.

I further note that there has been ongoing conflict between the parties regarding the presence of a dog. While the landlord submits this did not influence their decision to issue the notice, I find the timing of the issuance, a day after the landlord states in text messages that "your dog is driving my dog nuts, this is exactly what I didn't want. You need to find a place for it. Immediately" strongly supports that there were other factors influencing the landlord.

Viewed in its entirety, I find the landlord has failed to meet their evidentiary onus on a balance of probabilities to demonstrate that the rental unit will be used for the reasons stated. I find sufficient evidence that there are other factors motivating the issuance of the notice and consequently find the tenant's application to have merit. Accordingly, I cancel the 2 Month Notice of May 29, 2022, it is of no further force or effect.

Section 47(4) provides that a tenant may dispute a notice to end tenancy for cause within 10 days of being served. The parties agree that the tenant received the 1 Month Notice on August 9, 2022 and filed their amendment to the application on August 16, 2022. I therefore find the tenant was within the statutory timeline to dispute the 1 Month Notice.

The reason provided on the notice for the tenancy to end is that the tenant has significantly interfered with or unreasonably disturbed the landlord or others. The landlord submits that the tenant's failure to pay utilities when demanded constitutes an interference and disturbance.

I do not find the interpretation of the landlord to be reasonable or supported in the materials. I find that failure to pay rent or utilities does not constitute an interference or disturbance under the ordinary definition of those terms. The *Act* and the standard form notice specifically provides repeated late payment of rent as a distinct reason for the issuance of a notice to end tenancy for cause. Failure to pay rent or utilities as required under a tenancy agreement may give rise to the issuance of a notice to end tenancy for

non-payment pursuant to section 46 of the *Act*. I find that failure to pay utilities does not amount to an interference or disturbance that would give rise to a basis for a tenancy to end. Accordingly, I find the landlord has failed to meet their evidentiary onus and allow the tenant's application to cancel the 1 Month Notice. The notice of August 9, 2022 is cancelled and of no further force or effect.

The parties agree that the landlord had made demand for payment of utilities and considers payment late if they are not included in the date when the next monthly rent is payable.

I find it appropriate to note section 46(6) of the *Act* which provides as follows:

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid **more than 30 days after the tenant is given a written demand for payment of them,**

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

It is clear that after written demand for utilities is made those utilities are not due until 30 days after the date of the written demand for payment. Therefore, the landlord's interpretation that utilities need to be paid with the next monthly payment of rent is incorrect and contrary to the *Act*. While I appreciate that the landlord must bear the cost of the utilities until the date they become due, that is simply their onus as a property owner and landlord.

Under the circumstances, I find no order of compliance is required. I will note that any future treatment of unpaid utilities within the 30 day window for payment as late payments or issuing notices to end tenancy on the basis for late payments when the 30 days have not elapsed may give rise to a basis for a monetary award for unreasonable disturbance against the landlord.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord. As this tenancy is continuing I allow the tenant to satisfy this award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant is successful in their application. The 2 Month Notice of May 29, 2022 and 1 Month Notice of August 9, 2022 are cancelled and of no force or effect.

The 1 Month Notice of August 4, 2022 and the 10 Day Notices of July 13, 2022 and August 13, 2022 were withdrawn by the landlord.

The landlord is instructed that the *Act* provides a tenant 30 days from the issuance of a written demand for utilities to make payment.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: October 24, 2022

Residential Tenancy Branch