



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing. The landlord DS appeared with a witness DS, and the tenants YL and SL appeared with an agent PL. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenants confirmed receipt of the One Month Notice dated September 19, 2022 with an effective date of October 31, 2022 as well as receipt of the landlord’s evidence package. The landlord acknowledged receipt of the tenants’ dispute notice and evidence package. Service is in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice to End Tenancy for Cause valid and enforceable against the tenant? If so, is the Landlord entitled to an Order of Possession?
2. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced May 15, 2019 on a month to month basis. Rent is \$1,650.00 per month. The landlord holds a security deposit of \$825.00 and a pet deposit of \$500.00 in trust. The tenants still occupy the residence which is in a strata. The tenancy agreement was provided in evidence and refers to an addendum which was not provided in evidence.

The landlord is seeking to end the tenancy on the basis that the tenant failed to comply with a material term of the tenancy agreement. Specifically, the landlord alleged the tenants have accumulated a large amount garbage and debris in the yard of the rental unit. Both the neighbours and the strata have complained about the mess. The landlord gave several verbal warnings to the tenants to cleanup the mess, and two written warnings, June 19, 2022, and September 11, 2022. The landlord stated that both written warnings were provided in evidence, however only the September 11, 2022, written warning is in evidence before me.

The landlord also provided a letter from the strata regarding the state of the property. That letter refers to the specific strata bylaw that the landlord states that the tenant breached and formed the grounds for the One Month Notice. The strata letter is dated September 22, 2022. The landlord confirmed that the addendum to the tenancy agreement is the strata bylaws.

The tenants' position is that they were not given enough time to clean up the property after receiving the September 2022 warning and were unable to clean up the property after the June 2022 warning because of ongoing construction at the strata which impeded the tenants' ability to get a dumpster bin on site for the clean up.

The landlord disputed the tenants' assertion that the construction was ongoing to the extent that the tenants were unable to have a garbage bin at all during the time from June to September 2022. They further advised that the garbage and debris on the property and in the carport has been an issue for approximately four years.

Analysis

The One Month Notice in evidence gives one reason for ending the tenancy, that the tenants breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after being given notice to do so. The landlord was

clear in her evidence that the tenants breached rule 4.5 of the strata bylaws and that the tenants were familiar with the bylaws.

Section 47 of the Act lays out all of the grounds upon which a landlord can end a tenancy for cause and states in part:

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

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

One of the requirements under section 52 of the Act is that the One Month Notice must state the reason the tenancy is ending. The landlord complied with section 52 and checked the box on the form that corresponds to section 47(1)(h) of the Act. Further the landlord was very clear in the hearing that the material term that was breached was a strata bylaw.

The strata bylaws were not produced in evidence, other than the September 22, 2022, letter from the strata council that references the bylaw that has been contravened. That letter was issued after the One Month Notice was given on September 19, 2022.

I am not satisfied based on the failure to produce the strata bylaws in their entirety, that those bylaws were the addendum referred to in the tenancy agreement and formed part of the terms of the tenancy agreement. Furthermore, the only evidence that I have before me showing the tenant was aware of the specific strata bylaw referred to by the landlord is the September 22, 2022, letter from the strata, which the tenants received after the One Month Notice was issued.

I find that the landlord has failed to establish that the tenant breached a material term of the tenancy agreement. Therefore, the tenants' application to cancel the One Month Notice is granted and the One Month Notice is cancelled.

Having been successful, I find the tenants are also entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The tenants' application to cancel the One Month Notice dated September 19, 2022, is granted. The tenancy shall continue until it is ended in accordance with the Act. The tenant entitled to recover the filing fee and is permitted to deduct \$100.00 from one month's future rent on a one time basis.

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: November 09, 2022

Residential Tenancy Branch