



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on June 27, 2022, to have the landlord comply with the Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing

Issue(s) to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on September 1, 2022. Current rent in the amount of \$1,218..00 was payable on the first of each month. A security deposit of \$625.00 was paid by the tenant.

The reason stated in the notice to end tenancy was that the tenant has:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the parties entered into an extension of the tenancy which was to be a three-month fixed term period and the tenant was required to vacate the

rental at the end of the three-month period. The landlord stated that this was done because the tenant was planning to buy their own property and they were considering future plans for the premises and they both agreed to the short term tenancy with the vacate clause.

The tenant testified that they only received the Notice, because they would not agree to \$100.00 rent increase.

The landlord testified that they did ask the tenant to pay more rent; however, when the tenant notified them that it was outside the allowable amount they issued a proper notice of rent increase, which took effective November 1, 2022.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

Section 5 of the Act states,

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I accept the tenancy agreement has a vacate clause; however, a vacate clause can only be included in a tenancy agreement for the following reasons,

- If the landlord or a close family member will be occupying the rental unit at the end of the fixed term, or
- the tenancy agreement is a sublease agreement.

As neither of the above reasons for ending the tenancy apply to this matter. I find the vacate clause invalid and has no force or effect as this is an attempt to avoid or contract out of this Act. Therefore, I cannot find the tenant has breached a material term of the tenancy agreement.

Therefore, I grant the tenant's application to cancel the Notice and the tenancy will continue until legally ended. As the three-month fixed term has expired, I find the tenancy continues on a month-to-month basis.

Since the tenant was successful with their application. I find the tenant is entitled to recover the cost of the filing fee. Therefore, I authorize the tenant a onetime rent reduction of \$100.00 from December 2022 rent. The parties were informed of this at the hearing.

Conclusion

The tenant's application to cancel the Notice is granted. The tenant is entitled to a onetime rent reduction in the amount of \$100.00 from December 2022 rent to recover the cost of the filing fee.

Dated: November 29, 2022

Residential Tenancy Branch