



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, LRE

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed on July 5, 2022 (the “One-Month Notice”);
- an order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy; and
- an order pursuant to s. 70 to restrict the Landlord’s right of entry into the rental unit.

C.M. appeared as the Tenant. P.W. and L.R. appeared on behalf of the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Tenant’s Claim

At the outset of the hearing, I enquired whether a Two-Month Notice to End Tenancy had been served. The Landlord’s representatives advised that one had not. The Tenant confirmed only receiving the One-Month Notice. Based on the undisputed testimony of

the parties and as no notice to end tenancy was issued under s. 49 of the *Act*, I dismiss this portion of the Tenant's claim without leave to reapply.

Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

In the present application, the primary issue is whether the One-Month Notice is enforceable or not. The Tenant's claim under s. 70 to restrict the Landlord's right of entry is secondary as this portion of the claim may be rendered moot should the tenancy come to an end based on the One-Month Notice. I find that the Tenant's claim under s. 70 is not sufficiently related to the enforceability of the One-Month Notice. Accordingly, I dismiss this portion of the Tenant's claim. Based on whether the tenancy ends or continues, the claim under s. 70 may be dismissed with or without leave to reapply.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on June 13, 2017.
- Rent of \$1,121.00 is due on the first day of each month.
- The Tenant paid a security deposit of \$545.00 to the Landlord.

A copy of the tenancy agreement was put into evidence by the parties.

P.W. advised having served the One-Month Notice on the Tenant by personally delivering it, by leaving it in the Tenant's mailbox, and by registered mail, all of which

were sent out on July 5, 2022. The Tenant acknowledged receiving the One-Month Notice, though could not recall whether it was on July 5th or 6th. I have been provided a copy of the One-Month Notice by both parties. In it, it lists that it was issued on the basis that the Tenant had breached a material term of the tenancy agreement and includes the following description:

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):

The tenant, [REDACTED], on June 28th, 2022 was found in violation of section 17 Pets: having an unauthorized pet in her apartment with out written consent from the landlord. Caution Notice to tenant [REDACTED] was given on June 29th, 2022 for removal of unauthorized pet before 4:00 Pm July 4th, 2022. Delivery of the caution notice was witnessed by another tenant from the building, which has provided a letter of proof of being a witness to the delivery of caution notice to [REDACTED]. Upon inspection request by the landlord/agent, [REDACTED], Resident Building Manager, the pet has not been removed.

I have redacted personal identifying information reproduction above in the interest of the parties' privacy.

P.W. testified that she took note that the Tenant had a pet within her rental unit, provided the Tenant with a caution letter, and gave the Tenant until July 4, 2022 to address the issue. I was also referred to clause 17 of the tenancy agreement, which states the following:

17. **PETS.** It is a material term of this Agreement that, without the landlord's prior written consent, the tenant may not keep or allow on the residential property any animal, including a dog, cat, snake, bird, reptile or exotic animal, domestic or wild, fur bearing or otherwise. If the tenant has written permission from the landlord, the tenant must ensure the pet does not disturb or interfere with any person on the residential property or neighbouring properties or cause any damage to the rental unit or residential property. Should the pet cause any such damage, the tenant will be responsible for any resultant costs to the landlord of repairing the damage, compensating any person, and recovering legal or other expenses. If the tenant fails to correct a violation of this clause, including permanently removing a pet from the residential property after receiving notice from the landlord to correct the violation, the landlord may end the tenancy.

The Landlord's evidence also includes a copy of a caution letter dated June 29, 2022.

The Tenant acknowledges that she has a pet bird in her apartment, though emphasized that it was an emotional support animal and provides her company as she lives alone. The Tenant also acknowledged that the bird still lives in the rental unit. The Tenant further stated that when she signed the tenancy agreement, she did not read the fine print.

The Tenant testified that another occupant within the residential property has a pet dog, though that has not been an issue for the Landlord, this despite the Tenant saying she

has complained with respect to the noise. The Tenant argued the Landlord is playing favourites.

P.W. testified that the issue of the pet clause came up once before when the Tenant's son visited in June 2020. At that time, P.W. says that the Tenant asked whether her son could visit her with his dog, which P.W. says she rejected. Despite this, I am told a caution letter went out with respect to the dog incident in June 2020. The Tenant did not dispute this incident occurred and acknowledged she did break a rule at that time.

The Tenant confirmed that she continues to reside within the rental unit.

Analysis

The Tenant seeks an order to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to ss. 47(1)(h) of the *Act*, which is for breach of a material term of the tenancy agreement. Upon receipt of a notice to end tenancy issued under s. 47, a tenant has 10 days to dispute the notice. If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

I find that the One-Month Notice was served in accordance with s. 88 of the *Act*, which the Tenant acknowledged receiving. Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed her application disputing the One-Month Notice on July 7, 2022. Regardless of whether the One-Month Notice was received on July 5th or 6th, I find that the Tenant filed her application disputing the One-Month Notice within the 10 days permitted to her under s. 47(4) of the *Act*.

There are two issues with the present One-Month Notice. First, s. 47(3) of the *Act* requires all notices to end tenancy issued under s. 47 to comply with the form and content requirements set out under s. 52. Section 52(a) of the *Act* requires the notice to be signed and dated. In this instance, review of the One-Month Notice provided to me by the Tenant and that provided by the Landlord indicates that the copy provided to me by the Tenant is unsigned. I was provided no submissions on this point, though on the face of it I find that the copy received by the Tenant was unsigned given it was this copy in her possession that she provided to the Residential Tenancy Branch. Accordingly, I

find that the One-Month Notice is not in compliance with s. 52 as it was not signed and is not a proper notice to end tenancy under s. 47.

The second issue with the One-Month Notice is clear based on reference to s. 47(1)(h) of the *Act*, which states the following:

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;

In this instance, the caution letter dated June 29, 2022, provided to me by the Landlord, indicates that the Tenant had until July 4, 2022 to get rid of the bird. Without considering whether clause 17 is a material term, it is wholly unreasonable to place a 6-day deadline on the Tenant to rehome her pet, with that time frame also having the Canada Day statutory holiday falling within it. I find that the Landlord has failed to provide reasonable notice for the Tenant to correct her actions, which is in direct contravention of s. 47(1)(h).

On these two grounds, I grant the Tenant's application and cancel the One-Month Notice. I make no comments or findings with respect to whether clause 17 of the tenancy agreement is, in fact, a material term breach of which could give rise to the Landlord issuing a notice to end tenancy.

Conclusion

I grant the Tenant's relief and cancel the One-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant's claim under s. 49 of the *Act* is dismissed without leave to reapply as no notice to end tenancy was ever issued under s. 49.

The Tenant's claim under s. 70 of the *Act* to restrict the Landlord's right of entry is dismissed pursuant to Rule 2.3 of the Rules of Procedure with leave to reapply as the tenancy has not ended.

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 29, 2022

Residential Tenancy Branch