



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

A matter regarding Woodsmere Holdings Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

The tenants seek an order cancelling a *One Month Notice to End Tenancy for Cause* pursuant to section 47 of the *Residential Tenancy Act* (the “Act”). They also seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

A hearing was convened by teleconference on December 1, 2022. In attendance were both tenants, their legal advocate, and two representatives for the landlord. I affirmed the parties who testified and neither party raised any issue with the service of evidence.

Issues

1. Are the tenants entitled to an order canceling the *One Month Notice to End Tenancy for Cause* (hereafter the “Notice”)?
2. Are the tenants entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The landlord’s representatives (hereafter the “landlord” for brevity”) testified that they issued the Notice because of an incident on June 30, 2022. The incident involved an altercation between the tenants and another occupant of the building. The other occupant was a tenant who lived in a rental unit below that of the tenants. There was, according to the landlord, vocal and verbal abuse as part of the incident, and the landlord has a zero-tolerance policy on such behavior.

It is noted that the occupant (K.F.) who went to the tenants' rental unit was also issued a *One Month Notice to End Tenancy for Cause*. He did not dispute the notice and no longer resides in the building.

No charges were laid by the police, who later attended to the building. By the time the police arrived everyone involved was back in their apartments. No further incidents have occurred in the building involving the tenants.

Under cross-examination by the tenants' advocate both landlord representatives testified that they were not present at the time of the incident. They only became aware of the incident through third parties.

The tenants submitted written statements regarding their account of the incident. According to them, it was the tenant K.F. who came up and started the altercation. He apparently tried to get into the apartment and the tenants physically had to remove him or push him out. Also submitted into evidence for letters of support from other tenants in the building who spoke favorably and highly of the tenants. There is no evidence, the advocate added, of any pattern or repeat of the incident.

The advocate further submitted that, as a previous arbitrator found in a previous decision on an urgent application to end the tenancy, the tenant K.F. was the instigator, and that the tenants bear zero culpability for what happened. And that they are the victims of the lower tenant K.F.'s behavior, and that the arbitrator made a finding of fact that any reasonable person would behave in the same manner in trying to remove someone from their rental unit who ought not to be there.

The advocate argued that there are zero grounds to support the Notice, that there is no documentary evidence to support any such ground if there was one, and that neither of the landlord representatives who gave testimony witnessed the incident. One of the tenants (R.M.) briefly testified about the incident and confirmed the accuracy of his written statement.

Analysis

The Notice was issued under subsections 47(1)(d)(i) and (ii), which state that

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

The Notice was also issued under section 47(1)(e)(ii) which states that a landlord may issue a notice to end tenancy when

the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that [...] has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property [...]

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Based on the evidence before me, I am not persuaded that any of the three grounds have been proven on a balance of probabilities. Neither landlord representative was at the scene of the incident, and no witnesses were called to testify that they were significantly interfered with, unreasonably disturbed, or otherwise seriously jeopardized with their health, safety, lawful right, or interest. No other occupants of the building gave evidence to support a finding that there existed grounds for issuing the Notice. Finally, no criminal or statutory offense charges were laid by the police on either of the tenants and thus I am unable find that either tenant engaged in any illegal activity.

Indeed, the only individual who *may* have been affected by the tenants' actions was the culprit K.F. who made his way up from the apartment below and instigated the whole confrontation. But K.F. did not testify and he has since departed from the building.

Taking into careful consideration all of the oral and documentary evidence before me, it is my finding that the landlord has not proven on a balance of probabilities that there exist grounds on which the Notice was issued. For this reason, I hereby order that the Notice, signed and dated June 30, 2022, be cancelled effective immediately. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. When an applicant is successful in their application then the respondent is ordered to pay an amount equivalent to the applicant's filing fee.

In this dispute, as the tenants were successful in cancelling the Notice, they are entitled to recover the cost of the application filing fee. Pursuant to subsection 72(1) of the Act the landlord is ordered to pay for the tenants' application filing fee in the amount of \$100.00.

Further, pursuant to subsection 72(2)(a) of the Act, the tenants may deduct \$100.00 from their next rent payment (January 2023) in satisfaction of this claim.

Conclusion

The application is granted, and the Notice is hereby cancelled effective immediately.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 2, 2022

Residential Tenancy Branch