



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, DRI, LRE, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant 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
- for a monetary order for damage or compensation pursuant to section 67 of the Act
- cancellation of a rent increase pursuant to section 41 of the Act
- for an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70 of the Act
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing. The landlord KP appeared. The tenant AB appeared along with advocates ND and LH. 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 tenant confirmed receipt of the One Month Notice dated November 3, 2022 with an effective date of December 4, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The landlord testified that she received the tenant's dispute notice and materials and based on her testimony I find the landlord duly served in accordance with sections 88 and 89 of the Act. The landlord confirmed she did not file any materials.

Preliminary Issue

The tenant applied for several other orders in addition to cancellation of the One Month Notice. These issues are not related to the dispute of the One Month Notice and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenant has leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on March 1, 2014. Rent is \$700.00 per month due on the first of the month. The landlord still holds a security deposit of \$325.00. No pet deposit was paid. The tenant still occupies the rental unit.

The landlord testified that the tenant was hoarding in his suite, and he also stored items in the storage shed without her permission. He also was yelling and screaming at her when she tried to speak to him about it and he made her feel unsafe. He also was doing work in the yard of the rental unit without the landlord's permission.

The tenant denied hoarding in the rental unit. His advocate LH advised that no person has inspected the rental unit in an official capacity to determine whether there is a safety issue. The tenant provided pictures of the rental unit in evidence that were taken after he was served with the One Month Notice and his advocate stated that the condition of the residence post notice is a relevant consideration in the decision whether to cancel the One Month Notice.

The tenant testified that he did work for the landlord around the rental property at the landlord's request. He repaired portions of the property and therefore was working in the yard for that reason. One of the main things he repaired was the shed which he stated was in disrepair and had rats. He stored the tools he was using to do the work

around the property in the shed. The tenant alleged that at one point the landlord paid him \$400.00 for work he had done around the property. He testified that the landlord never asked him to remove the tools from the shed. The tenant's agent submitted that putting tools in the shed did not put the landlord's property at risk. The tenant also produced photos of a storage unit he has rented to store some of his things in order to appease the landlord.

The tenant stated that he has had a pet throughout his tenancy. The landlord was well aware of the pet for eight years and never asked the tenant to remove the pet.

The landlord stated that the tenant was not being truthful in his evidence.

Analysis

RTB Rules of Procedure 6.6 states, "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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The landlord issued the One Month Notice because the tenant has put the landlord's property at significant risk. The landlord detailed the things she believed were putting her property on the One Month Notice as follows:

The following are not included in Residential Tenancy Agreement -

- 1 Pet
- 2 keep tenant's stuff in landlord's storeroom in the yard
- 3 using workplace in the yard
- 4 Too many stuff in tenant's room can cause health and safety, hoardingfs and not suitable to live in.

However the landlord did not provide evidence about how any of these things put her property at significant risk. Further I accept the tenant's photographic evidence of the current state of the rental unit and find that post notice his conduct does not demonstrate hoarding that would put the landlord's property at risk. Additionally, the landlord did not provide evidence from an inspector in an official capacity to state that the rental unit is at risk or otherwise a safety hazard due to the tenant's hoarding. The

landlord did not explain how the yelling and screaming that the tenant is alleged to have done put the landlord's property at a significant risk.

The landlord has not established the reason for issuing the One Month Notice. I do not find that any of the tenant's actions described by the landlord put the landlord's property at significant risk. I therefore find that the form and content requirements of section 52 of the Act have not been satisfied.

The tenant's application to cancel the One Month Notice is granted. As the tenant was successful in his application he is entitled to recover the \$100.00 filing fee for this application.

Conclusion

The tenant's application to cancel the One Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act. The tenant is 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: January 23, 2023

Residential Tenancy Branch