



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, RP, PSF, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), on August 26, 2022. The Tenant applied to cancel the One-Month Notice to End Tenancy for Cause (the “Notice”) dated August 12, 2022, for an order that the Landlords comply with the Act, for a monetary order for compensation for my monetary loss or other money owed, for an order that the Landlord make repairs to the rental unit, for an order to provide services or facilities required by the tenancy agreement or law, and the return of their filing fee.

Two Agents for the Landlord, and the Assistant Property Manager (the “Landlord”) as well as Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that these other issues are not related to the Tenant's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claims for an order that the Landlords comply with the *Act*, for a monetary order for compensation for my monetary loss or other money owed, for an order that the Landlord make repairs to the rental unit, for an order to provide services or facilities required by the tenancy agreement or law.

I will proceed with this hearing on the Tenant's claim to cancel the Notice and recover the filing fee.

Issues to be Decided

- Should the Notice issued on August 12, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee of their application?

Background and Evidence

The tenancy agreement recorded that the tenancy began on October 15, 2020, that rent started at \$1,850.00 per month and is due on the first day of each month, and that the Landlord collected a \$925.00 security deposit and a \$925.00 for this tenancy. The Landlord testified that section 42 of tenancy agreement contains a non-smoking material term. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they have received multiple complaints about the Tenant smoking in their rental unit and that they have spoken to the Tenant several times about this breach of the tenancy agreement, demanding that they stop and comply with the non-smoking material term of their tenancy. The Landlord testified that they have issued four separate written warnings to the Tenant for their breach of the non-smoking material term of the tenancy but that they continue to receive complaints.

The Landlord testified that the complaints regarding the Tenant's smoking started in October 2021 and that after each written warning the complaints would stop for a few weeks to a few months but would always start up again. The Landlord testified that they issued written warnings on October 28, 2021, November 19, 2021, December 29, 2021, and February 16, 2022. The Landlord submitted copies of the four written material term breach letters into documentary evidence.

The Landlord testified that they received a further 15 smoking complaints in June 2022, and that it was determined that due to the number of complaints that they had no option but to issue the Notice to end the tenancy due to the breach of this material term.

The Landlord testified that they served the Notice to end tenancy dated August 12, 2022, to the Tenant via Canada Post registered mail sent on August 15, 2022. Both the Landlord and the Tenant submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

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

The Landlord is requesting an Order of Possession to enforce their Notice.

The Tenant testified that they initially misunderstood the material term of their tenancy but that they have not smoked in the rental unit since the November 2021 written warning, and that the current complaints about smoke are due to another renter smoking, not them. The Tenant is requesting that the Notice be cancelled.

Analysis

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Residential Tenancy Policy Guideline # 8 Unconscionable and Material Terms states the following:

“To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.”

I have reviewed the four written warnings issued to the Tenant in this case and noted that none of these written warnings advised the Tenant that the Landlord would end their tenancy if the material term breach continued, as required in the Residential Tenancy Policy Guideline # 8 Unconscionable and Material term noted above.

I find that the Landlord did not meet the written warning notice requirements before they issued their Notice to end this tenancy. Therefore, I grant the Tenant’s application to cancel the Notice dated August 12, 2022, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

The Tenant is cautioned, that breaches to the no smoking term of their tenancy agreement may result in sufficient grounds to end their tenancy.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is allowed to take a one-time deduction of \$100.00 from their next month’s rent in satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice, dated August 12, 2022, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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 16, 2023

Residential Tenancy Branch