



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On September 17, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with I.M. attending as well. However, as will be noted later, I.M. was not a Tenant as part of this tenancy. Furthermore, the additional Applicants noted on this Application have been removed accordingly, as they are not Tenants of this tenancy. L.Z. and K.C. attended the hearing as agents for the Landlord.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed, and there were issues with service of the Notice of Hearing package as the Landlord never provided a service address for the Tenant, and the Tenant served the Landlord via email on September 29, 2022. While L.Z. claimed that the Landlord could not receive emails while out of country and that as a result, he was only informed, by the Landlord, of this hearing yesterday, there were also contradictory submissions made by L.Z. that the Landlord may have known about this

hearing before. Moreover, L.Z. admitted that he did not include an address for service on the Notice because he did not want the Tenant to know where he lived. Regardless, K.C. advised that they were prepared to proceed with the hearing. As such, I have accepted the Tenant's documentary evidence and will consider it when rendering this Decision.

K.C. also confirmed that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

L.Z. advised that the Landlord originally signed a tenancy agreement with a different person ("J.G."); however, he was not certain when this was done, and a copy of this tenancy agreement was not submitted as documentary evidence for consideration. He

then testified that J.G. moved out at some point in 2020, but he did not know when this specifically happened either.

K.C. advised that J.G. told the Landlord that J.G.'s cousin ("J.W.") would be taking over the tenancy. She acknowledged that J.G. was the only person listed on the written tenancy agreement, but after J.G. moved out, J.W. started paying the rent in full, directly to the Landlord. She then stated that at some point last year, the Tenant texted stating that he would be taking over the tenancy from J.W., as J.W. was leaving. As well, she submitted that the Tenant then started paying the rent directly to the Landlord. However, she was not certain of any dates of when all of this happened.

Regardless, they both indicated that rent was \$3,800.00 per month, that it was due on the first day of each month, and that a security deposit of \$1,900.00 was paid by J.G. Furthermore, they acknowledged that J.G. never provided a forwarding address in writing after vacating the rental unit, and that no new tenancy agreements were signed with J.W. or the Tenant because they believed that the tenancy agreement with J.G. simply continued. As well, they stated that neither J.W., nor the Tenant ever paid a security deposit to the Landlord.

The Tenant advised that he took over the rental unit from J.W. in June 2021 after J.W. left, and that he paid rent to the Landlord directly each month. However, he stated that K.C. told him that rent was actually due on the seventh day of each month, and he has been paying the Landlord accordingly. He confirmed that neither he, nor J.W., had ever signed a tenancy agreement with the Landlord, and that neither of them had paid a security deposit to the Landlord.

L.Z. advised that the Tenant was served the Notice by hand on September 16, 2022, and he confirmed that it was not signed by the Landlord, or an agent of the Landlord. The Tenant also agreed that the copy of the Notice that was received was not signed by the Landlord, or an agent of the Landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

The first issue I must address is the unclear and uncertain state of the written tenancy agreement between the Landlord and J.G. The undisputed evidence before me is that J.G. had signed a tenancy agreement with the Landlord, that he had been solely paying rent to the Landlord, and that at some point in 2020, he left the rental unit, with no written notice ending his tenancy in accordance with the *Act*. At that point, J.W. then suddenly, and solely, started paying rent directly to the Landlord for a significant period of time, until he vacated the rental unit in or around May 2021. Then, the Tenant started paying the rent solely on June 1, 2021, directly to the Landlord.

While J.G. did not give written notice to end his tenancy, there is no dispute that he vacated the rental unit at some point, and that the Landlord had been accepting rent from a completely different person (J.W.) for a significant amount of time. As such, I am satisfied that J.G.'s tenancy ended when he left the rental unit, and when J.W. started paying the rent. As J.G. never provided a forwarding address in writing within a year of his tenancy ending, whenever that was, I find that the Landlord is entitled to keep his security deposit as per Section 39 of the *Act*.

Furthermore, from the testimony before me, I am satisfied that by accepting rent from J.W. for such a long time, the Landlord had clearly established an unwritten month-to-month tenancy with him. However, as the security deposit was paid by J.G., and as I have found that the Landlord was permitted to keep that deposit, the Landlord now has no security deposit for J.W.'s tenancy.

Moreover, from the testimony before me, I am satisfied that J.W. then ended his month-to-month unwritten tenancy by vacating the rental unit in May 2021, but again, this was not ended in accordance with the *Act*. Regardless, given that J.W. left and given that the Landlord then started accepting rent directly from the Tenant, she established a new unwritten month-to-month tenancy with the Tenant as of June 1, 2021.

I find that the fact that the Landlord named the Tenant on the One Month Notice to End Tenancy for Cause further points to a reasonable conclusion that a tenancy between the Landlord and the Tenant was created. Furthermore, as the Landlord named only the Tenant on the Notice, and as only the Tenant has been paying the rent to the Landlord, I am satisfied that there are no other tenants as part of this tenancy and the Tenant is solely responsible for it. As above, as the security deposit was paid by J.G., and as I have found that the Landlord was permitted to keep that deposit, the Landlord does not have a security deposit for the Tenant's tenancy.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenant on September 16, 2022, as all parties confirmed that neither the Landlord, nor an agent of the Landlord, signed a copy of this Notice served on the Tenant, this Notice does not comply with the requirements as to the form and content of Section 52 of the *Act*. As such, I am not satisfied of the validity of the Notice. Therefore, I find that the Notice of September 16, 2022, is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. As such, the Tenant is permitted to withhold this amount from the next month's rent to satisfy this debt.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of September 16, 2022, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*. The Tenant is also authorized to withhold the \$100.00 filing fee from the 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: February 3, 2023

Residential Tenancy Branch