



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, DRI, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant August 17, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated August 16, 2022 (the “Notice”)
- To dispute a rent increase
- For reimbursement for the filing fee

The first hearing for this matter occurred October 04, 2022, and the original Decision was issued the same day. The Landlord sought, and was granted, a review hearing. The review hearing occurred before me February 17, 2023.

The Tenant appeared at the review hearing. The Tenant was going to call a witness at the review hearing; however, it was determined that the witness was not relevant to the issues between the parties. The Landlord appeared at the hearing with E.H. as their agent. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and request for the filing fee but dismiss the dispute of a rent increase because it is not sufficiently related to the dispute of the Notice. The dispute of a rent increase is dismissed with leave to re-apply. This decision does not extend time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package, Tenant's evidence, Landlord's evidence, Review Decision and new Notice of Dispute Resolution Proceedings, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed the original Decision set out the details of the tenancy agreement accurately. The original Decision states:

The parties testified and agreed to the following; the tenancy began on November 1, 2020. The Tenant currently pays rent in the amount of \$2,700.00 each month to the Landlord which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,250.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Notice was submitted. The grounds for the Notice are:

1. Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.

The Landlord testified that the Notice was sent to the Tenant by registered mail August 15, 2022. The Tenant testified that they received the Notice August 17, 2022, by email.

The Landlord takes issue with the number of people living in the rental unit. The Landlord agrees three people living in the two-bedroom, two-bathroom rental unit is

acceptable but submits that the Tenant has had more than three people living in the unit at one time, which is unacceptable. The Landlord acknowledged they never told the Tenant in writing prior to issuing the Notice that the Tenant could not have more than three people living in the rental unit. The Landlord testified that they only ever told the Tenant verbally that only three people could live in the rental unit at one time. The Landlord pointed to term 14 in the tenancy agreement which states:

(14). ADDITIONAL OCCUPANTS:

When a person who is not listed as a tenant in section 1 or under occupant in section 3, on the first page of this Agreement, resides in the premises for a period in excess of 14 accumulative days in any calendar year, they shall be considered to be occupying the premises contrary to this Agreement and without the right or permission of the landlord. This person shall be considered a trespasser. Where the tenant anticipates an additional person in the rental premises, they shall promptly apply in writing for permission from the landlord for such person to become a occupant. Failure to apply and obtain the necessary approval of the landlord in writing is considered a fundamental breach of this Agreement. The landlord may at his option give immediate notice to end this Agreement or may at his option give notice to the tenant to immediately correct the breach. The landlord has the right to end the tenancy, if the tenant fails to correct the said breach within a reasonable time after having been given written notice by the landlord.

The Tenant testified that there have been at most four people living in the rental unit at one time. The Tenant submitted that the Landlord has known there were four people living in the rental unit since the start of the tenancy and that this only became an issue when the Landlord wanted to increase rent illegally. The Tenant testified that they were never told it was a problem that there were four people living in the rental unit until they were issued the Notice. The Tenant denied that the Landlord ever communicated prior to the Notice being issued that they could only have three people living in the rental unit.

Analysis

The Notice was issued pursuant to section 47 of the *Act*. The Tenant disputed the Notice in time. The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Tenant acknowledged they have had four people living in the rental unit at one time. The Tenant denied having more than four people living in the rental unit at one time. The Landlord takes issue with four people living in the rental unit versus three people, which the Landlord has allowed in the past.

In my view, there is an issue here about whether the Tenant knew what was considered acceptable and unacceptable regarding the number of people living in the rental unit. I have reviewed the evidence and do not see where the Landlord told the Tenant they could not have more than three people living in the rental unit, other than in an August 15, 2022 email. Although the Tenant was told three people were the limit on August 15, 2022, the Notice was issued August 16, 2022, the following day. This is not sufficient.

The Landlord should have made it clear from the outset, in writing, how many people were allowed to live in the rental unit. I am not satisfied the Landlord did so. Nor am I satisfied based on the evidence provided that the Landlord previously enforced term 14 of the tenancy agreement.

In the absence of clear written notice to the Tenant well before the Notice being issued stating in no uncertain terms that the Tenant can only have three people living in the rental unit at one time, I am not satisfied the Landlord had grounds to issue the Notice on August 16, 2022.

What occurred after August 16, 2022, is not relevant because the issue before me is whether the Landlord had grounds to issue the Notice on August 16, 2022.

Given the above, I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*. Moving forward, the parties should be communicating in writing about all issues in this tenancy, particularly the issue raised in this matter.

Given the Tenant has been successful in the Application, the Tenant is entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment.

Although the outcome of this Decision is the same as the original Decision, my decision differs from the original Decision and therefore I set aside the original Decision.

Conclusion

I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*. The Tenant can deduct \$100.00 from one future rent payment.

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: February 27, 2023

Residential Tenancy Branch