



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, LRE, RPP, OLC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued on the landlord's behalf,
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order requiring the landlord to return their personal property;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the cost of the filing fee.

The tenant and the representatives for PGT, MB and JW, who now represent the landlord, attended the hearing. All parties were affirmed. The representatives submitted that the landlord became their client in August 2022 and that the landlord was not present due to concerns for their mental health.

The parties were provided an overview of the hearing process and were given the opportunity to ask questions prior to the hearing. The representatives raised no issue with regard to the receipt of the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package). The representatives confirmed filing no evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details

of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Rule 2.3 states that 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.

In this application, the tenant listed multiple claims. I find the most urgent matter to consider is the tenant's request for cancellation of the Notice and further find that not all the additional claims on the application are sufficiently related to the primary issue. I will, therefore, only consider the tenant's request to cancel the Notice and the tenant's request to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenant's evidence included a copy of a written tenancy agreement with another landlord. The tenancy began on June 1, 2019, and monthly rent was \$1,250, with a security deposit of \$625 being paid.

The parties agreed that the tenant lived in Suite A at the start of the tenancy and moved to Suite B in October 2021. Suite B was the lower unit. The current landlord lives in Suite A. The tenant submitted that their current monthly rent was \$850. The landlord's representative said there was a written tenancy agreement for the current tenancy.

A copy of the 1 Month Notice was filed in evidence by the tenant. The Notice was dated September 27, 2022, for an effective move-out date of October 31, 2022. The Notice was signed by a representative of PGT and served to the tenant, by email.

I heard from the representatives that the tenant refused to accept the Notice by email, which led the representative to serve a 2nd 1 Month Notice, by attaching it to the tenant's door on October 28, 2022, listing an effective move-out date of November 30, 2022. The representative asserted that they believed this cancelled the first 1 Month Notice.

In their application, the tenant wrote the following:

(landlord) has made false allegations for the reasons to vacate premises and has given me a 30 day notice. This is a consistent patter of (landlord first name) and has conducted this same type of behaviour many times with other tenants since I have been her the last 4 years. Evidence will be presented verbally or written at the arbitration hearing. I will vacate the premises as it is not mentally healthy for me nor my 6 year old son, however I am requesting 4 months notice rather than 30 days.

[Reproduced as written except for redacting personal information to protect privacy]

The causes listed on the 1 Month Notice are:

1. Tenant has allowed an unreasonable number of occupants in a rental unit.
2. Tenant is repeatedly late paying rent.
3. Tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
4. Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
5. Tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.
6. Tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has, or is likely to damage to the landlord's property.
7. Tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has, or is likely to adversely affect or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Pursuant to Rule 6.6 and 7.18, the landlord proceeded first in the hearing to support the Notice.

In the Details of Dispute section on the Notice, the landlord is instructed to “describe what, where and who caused the issue and include dates/times, names, etc. **This information is required.** An arbitrator may cancel the notice if details are not provided”.

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): Per [redacted]: On September 10th, [redacted] had come up to my unit and violently screaming that I had offended her father. Door which was open was closed to stop entry. I don't feel safe emotionally, financially. Cats have ruined section. Unit smells like cat urine. Litter littered the grounds. Ruined carpets. Also tried to sit on my lap during party. Personal Violation.

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In support of the Notice, MB said that their testimony is based on their understanding of the situation. MB testified to the following: The landlord has paranoia and significant mental health issues and maybe having a tenant is not beneficial to their mental health. There could be boundary issues with having a tenant in the same house. The landlord is unwell and having a tenant live in the same property is putting the landlord at risk. The tenant has not been at fault, but the situation of having a tenant is not mentally healthy for the landlord.

In response, the tenant said that she is not at the rental unit all that much due to working 5-6 days a week and when she comes home, she is quiet. The tenant said she does not make much noise, such as playing music loudly or having many guests over.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In this matter, the landlord agreed that the 1 Month Notice of October 28, 2022, listing the same reasons as on the September 27, 2022, cancelled the earlier Notice of September 27, 2022.

Further, for this reason, I **cancel** the September 27, 2022 Notice and order that it is void and of no force or effect.

As a result, the hearing proceeded on the merits and consideration of the October 28, 2022 Notice, which listed the same reasons on the September 27, 2022.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

In order to end a tenancy under section 47 of the Act, the landlord must provide sufficient evidence that they had cause to do so, due to the actions of the tenant or persons allowed on the property by the tenant. The exception is that the rental unit must be vacated to comply with an order of government authority.

In this matter, the only submissions of the representatives involved what is best for the landlord's mental health. The representatives failed to submit any allegations of wrongdoing against the tenant. The single reason presented at the hearing for attempting to evict the tenant was due to the mental health of the landlord. The representatives alluded to the fact the tenant was not at fault, it would just be best for the landlord if there was not a tenant in the property.

While the landlord's representatives listed other reasons on the 1 Month Notice, they presented no evidence.

For all these reasons, I find the landlord or their representatives submitted insufficient evidence of any of the causes under section 47 of the Act to end this tenancy.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated October 28, 2022, for an effective move out date of November 30, 2022, is not valid and not supported by the evidence, and therefore has no force and effect.

I therefore grant the tenant's application for cancellation of the 1 Month Notice.

I **ORDER** that the Notice be cancelled and further order that the tenancy continue until ended in accordance with the Act.

For the above reasons, I grant the tenant's application. As the tenant's application had merit, I grant the tenant recovery of the \$100 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

The landlord's representatives asked about issuing further Notices if I cancelled the present Notices. I caution the representatives that issuing further unsupported Notices in attempts to evict the tenant may entitle the tenant to file an application seeking compensation for a loss of quiet enjoyment.

Conclusion

The tenant's application for cancellation of the two 1 Month Notices was successful.

The Notices issued by the landlord have been ordered cancelled and are of no force or effect due to the insufficient evidence of the landlord.

The tenancy has been ordered to continue until ended in accordance with the Act.

The issues in the tenant's application not dealing with their request to cancel the 1 Month Notice were severed, and dismissed, with leave to reapply.

The tenant was granted recovery of the \$100 filing fee.

The landlord's representatives have been given cautions.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 17, 2023

Residential Tenancy Branch