



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on March 16, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding. However, they stated they did not get any of the Tenant's evidence. The Tenant was unclear about what evidence was included. I find the Tenant failed to sufficiently demonstrate that he served any of his evidence that he uploaded to the RTB website. I find the Tenant's documentary evidence is not admissible, as it has not been sufficiently served. The Landlord did not provide any documentary evidence, other than a copy of the 1 Month 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.

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord issued the Notice for the following reasons:

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

The Tenant acknowledged receiving the Notice on October 27, 2022. Under the “Details of Cause” section on the Notice, the Landlord stated that the Notice was issued because of an issue where the Tenant obtained roosters which impacted adjacent units, causing noise disturbances.

The Landlord stated that this issue arose in September 2022, when the Tenant obtained several loud roosters, and put them in the front yard. Subsequently, neighbours complained, and city bylaw department became involved. The Landlord stated that it took the Tenant well over a month to get rid of the roosters.

The Tenant does not refute that he got roosters, and that they were noisy. However, he stated that he did this to help his daughter out as they roosters did not have another home. The Tenant re-homed the roosters by November 2022.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*.

I turn to the first ground the Landlord identified on the Notice which is that the Tenant has breached a material term of the tenancy agreement that was not corrected within a

reasonable time after written notice to do so. I note there was an issue with the Tenant obtaining roosters, without first asking the Landlord.

I turn to Residential Tenancy Policy Guideline #8 which speaks to “Material Terms”:

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.*

I note there is no admissible copy of the tenancy agreement, and there is insufficient evidence that the parties had any agreement or discussion about whether or not roosters or chickens are permitted under the tenancy agreement. Ultimately, without a copy of the tenancy agreement, I am not satisfied that the Tenant is in breach of a material term of the tenancy agreement, particularly since the Landlord failed to speak to why this term was material to the tenancy itself.

Overall, I find that the landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, the Tenant’s application is successful and the Notice received by the Tenant on October 2022, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant’s application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) 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 *Residential Tenancy Act*.

Dated: March 17, 2023