



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

The Tenant filed an Application for Dispute Resolution on January 3, 2023 seeking cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 2, 2023.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The Tenant stated that they delivered the Notice of Dispute Resolution Proceeding and their single page of evidence to the Landlord in person. The Landlord confirmed they received this.

Preliminary Matter – Landlord’s evidence

The Tenant described the One-Month Notice document they received from the Landlord. They did not provide a copy of this in their evidence for this hearing.

The Landlord did not provide evidence, neither to the Tenant nor to the Residential Tenancy Branch in preparation for this hearing.

After reviewing the matter of the One-Month Notice in the hearing, I notified the parties that any decision I make concerning that document requires my verification of its form and content.

Rule 3.19 allows an arbitrator to direct a party to provide evidence after a hearing starts. I allowed the Landlord the opportunity to provide a copy of the One-Month Notice. This was so I could verify key details on that document. I find there is no prejudice to the Tenant because this was the same document served to them in December 2022 and formed the basis for their Application to the Residential Tenancy Branch on January 3, 2023. I give this document full consideration where necessary in my decision below.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If unsuccessful, is the Landlord entitled to an order of possession, as per s. 55 of the *Act*?

Background and Evidence

Neither party provided a copy of the tenancy agreement in place between the parties. The Tenant provided details in the hearing: they moved into the rental unit in November 2016. The starting amount of rent was \$700, and this increased to \$850 over the course of this tenancy. The Tenant stated they did not pay a security deposit.

The Landlord stated they asked for a security deposit at the start of the tenancy; however, the Tenant did not pay. The Landlord stated definitively that they would not accept a new tenant without having a security deposit in place. The Landlord considered the proper amount of \$350 to be the security deposit amount owing.

The Tenant stated, in response to the Landlord's recollection, that they paid one-half rent amount for their move into the rental unit in mid-November, and they also paid one-half of the rent amount as payment of the security deposit. This meant the Tenant paid a full \$700 to the Landlord at the start of the tenancy, when they moved into the rental unit in the middle of the calendar month.

The Landlord stated their family member went to the rental unit to serve it to the Tenant in person; however, the Tenant was not home at that time. The Landlord they took photos of the document and sent those images to the Tenant via text message on that same date.

On page 2 of the document the Landlord checked the reasons for the One-Month Notice:

- security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The Landlord provided details on page 2:

The security deposit was not paid at the time of move in or after. [The Tenant] asked for new carpet to be placed in the bedroom instead of the laminate flooring. [The Tenant] said [they] would pay the cost of installation but did not do so in the end.

The Landlord recalled their discussion to the Tenant about needing to end the tenancy. They stated to the Tenant that they provided an official reason on the One-Month Notice; however, they could also have used a Two-Month Notice to End Tenancy for Landlord's Use of the Property. They told the Tenant in person that they could take more time to vacate the rental unit, *i.e.*, a two-month timeframe if necessary.

The Tenant presented that they felt that part of the advance rent they paid at the start of the tenancy (that is, \$700) actually included a security deposit. They paid the equivalent of one whole month's rent, when they only moved into the rental unit in mid-November.

The Tenant also pointed to discussions they had with the Landlord's spouse about the Landlord increasing the rent. The Tenant's understanding was that the Landlord was proposing that the Tenant could stay with an increase of \$600 in rent. The Landlord's interpretation was that this was a discussion about the Landlord's own need for the rental unit, with comparable rent elsewhere being an amount roughly \$600 more than what the Tenant was currently paying in the rental unit.

Analysis

The *Act* s. 20(a) provides that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

The *Act* s. 47 of the *Act* states, in part:

- 47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement

Combining these two provisions, I find that a landlord requiring a tenant to pay a security deposit is limited to the 30-day period after the parties entered into the tenancy agreement. Should a tenant fail to pay within that time limit, a landlord may end a tenancy by giving notice to end the tenancy.

The Tenant states the \$700 amount they paid to the Landlord included the security deposit amount of \$350. The Landlord presented in the hearing that the Tenant did not pay a security deposit when required.

I find the Landlord's record on the requirement for a security deposit is not fulsome enough to show that the issue of the security deposit was truly a problem at the start of the tenancy when it was required, as per the *Act*. That is, there is no evidence of repeated requests or demands from the Landlord to the Tenant for its payment. That is necessary in this instance where the Landlord is seeking to end the tenancy for this reason. The onus here is on the Landlord to prove that they issued the One-Month Notice for a valid reason. Without proof thereof of the discussions had (aside from the issues about flooring or carpet installation), I cannot find that the Landlord had a valid reason for ending the tenancy on the issue of the security deposit.

That issue would be in-scope had the Landlord raised the issue properly at the start of the tenancy. The parties agree that the tenancy started in late 2016. For the Landlord to proffer the reason of no security deposit now, over six years later, is untenable. In sum, I find that this reason for ending the tenancy, as indicated by the Landlord on the One-Month Notice, is not valid. I find it is some pretext utilized by the Landlord to end the tenancy.

The Landlord also spoke about their need for the rental unit, and this was posed to the Tenant as an alternative. This was in conjunction with some discussion about an increased rent amount; however, I accept the Landlord's explanation that they did not propose a drastically increased rent amount to the Tenant. Nonetheless, the Landlord had articulated to the Tenant that they had their own need for the rental unit, and in line with this the Landlord then granted the Tenant an extra month to move out. In effect, I find this also cancels the legislative purpose of a one-month time period to end a tenancy for cause. If the true reason was the Landlord's need for the rental unit, the Tenant would then have the right to s. 51 compensation in the form of one month's free rent.

In summary, I find both the reason indicated by the Landlord on the document (involving a security deposit), the timeliness thereof, as well as the alternate timeframe for the Tenant to move out mentioned by the Landlord each combine to invalidate this One-Month Notice.

Conclusion

For the reasons outlined above, I so order the One-Month Notice that the Landlord served on December 29, 2022 is cancelled. The tenancy shall continue.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 2, 2023

Residential Tenancy Branch