



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 23, 2023 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated January 12, 2023 (the "One Month Notice"); and
- an order granting the return of the filing fee.

The Tenant, the Tenant's Advocate, the Landlord, and the Landlord's Agent attended the hearing at the appointed date and time.

The parties confirmed service and receipt of the Notice of Hearing and respective documentary evidence packages. As there were no issues raised relating to service, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary Matters

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 is compliant with the *Act*.

At the start of the hearing, it was noted that the One Month Notice was not signed or dated by the Landlord. The Landlord stated that the One Month Notice submitted into evidence was just a rough draft and that the copy served to the Tenant was dated January 12, 2023 and was signed by the Landlord. The Tenant confirmed the same. As such, I find that the Landlord's One Month Notice meets the requirements of Section 52 of the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 1, 2017. The Tenant currently pays rent in the amount of \$1,969.10 which is due on the first day of each month. The Tenant paid a security and a pet damage deposit each in the amount of \$947.50. The Tenant continues to occupy the rental unit.

During the hearing, the parties confirmed that they had a previous Dispute Resolution Hearing before the Residential Tenancy Branch. A copy of the Decision was submitted into evidence. I note that the previous hearing dealt with the Tenant's Application to cancel a Notice to End Tenancy. In the December 8, 2022 Decision, the Arbitrator cancelled the One Month Notice to End Tenancy and ordered that the tenancy continue.

After receiving the December 8, 2022 Decision, the Landlord re-served a new One Month Notice on January 12, 2023 which the Tenant has again disputed. The Landlord's Agent stated during the hearing that they were not successful during the last hearing as they did not have sufficient evidence. The Landlord's Agent stated that they provided further evidence for this hearing. The parties confirmed that some of the details of cause listed on the January 12, 2023 One Month Notice were the same as the

previous One Month Notice that was already decided on in the December 8, 2022 Decision. Specifically, the issues surrounding the Tenants use of common areas to store his personal possessions and camper.

The Landlord stated that they have added one new issue since the last One Month Notice which relates to the fact that the Tenant has two cats without the Landlord's permission contrary to the tenancy agreement. The Tenant stated that he got the cats over two years ago and that the Landlord has known about them. The Landlord acknowledged that they have known that the Tenant has cats for at least one year now.

The Landlord stated that she subsequently served the Tenant with the One Month Notice on January 12, 2023 by posting it to the Tenant's door. The One Month Notice has an effective vacancy date of February 28, 2023. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit"

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

The Tenant confirmed having received the One Month Notice but could not recall when. The Tenant stated that they have moved their camper off the property and have placed their possession under the deck. The Tenant feels as though the Landlord is only raising the issue surrounding the cats as the Landlord has ulterior motives for ending the tenancy.

The Landlord's Agent stated that they are wanting the rental unit cleaned up so that they can move into the rental unit themselves. During the hearing, the Landlord's Agent stated:

"Ill give you a clue here, this is our house, we want to clean it up to make it presentable for us to move in. Take note, this will happen. You're not helping by piling up your stuff everywhere."

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Landlord served the Tenant with the One Month Notice on June 12, 2023. The Tenant confirmed having received the One Month Notice but could not recall when. I find the One Month Notice is deemed to have been served to the Tenant three days later on June 15, 2023, pursuant to Section 88 and 90 of the Act.

I find the Landlord's reason for ending the tenancy on January 12, 2023 One Month Notice relate to the Tenant's misuse of storing their possession in common areas, which was the same as the previous One Month Notice that had been set aside in the December 8, 2022 Decision.

As the issues relating to the Tenant storing their possessions in common areas on previous One Month Notice are identical to the current One Month Notice dated January 12, 2023 and that this has already been determined in the December 8, 2022 Decision, I find that today's matter is *res judicata*. In other words, the legal issue was resolved in a previous decision, and I have no authority to alter that decision. I therefore deny reconsideration the reasons relating to the Tenant's possession in the common areas during this hearing.

The only remaining reason for ending the tenancy on the January 12, 2023 One Month Notice relates to the Tenant having cats in the rental unit without the Landlord's permission. During the hearing, the Landlord confirmed that they have had knowledge of the cats for over a year.

According to Policy Guideline 8 A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

In this case, I accept that the Landlord was aware that the Tenant had cats in the rental unit for over one year. As the Landlord did not take action to enforce the term in the

tenancy agreement which requires the Tenant to seek permission from the Landlord prior to getting the cats, I find that it demonstrates a lack of materiality in the term. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant having cats is a breach of a material term of the tenancy agreement. I further find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has caused extraordinary damage to the rental unit.

In light of the above, I cancel the One Month Notice, dated January 12, 2023. I order that the tenancy continue until ended in accordance with the Act. During the hearing, the Landlord's Agent expressed an interest to end the tenancy for Landlord's Use. The Landlord is at liberty to serve a Two Month Notice to End Tenancy for Landlord's Use of the Property, should they in good faith intend to occupy the rental unit within a reasonable amount of time, and for at least 6 months.

As the Tenant was successful with their Application, I find that they are entitled to deduct \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's Application is successful. The One Month Notice dated January 12, 2023 is cancelled. The tenancy will continue until it is ended in accordance with the Act. The Tenant is permitted to deduct \$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: May 30, 2023

Residential Tenancy Branch