



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding PEACE ARCH SENIOR CITIZENS HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPC FFL
For the tenant: CNC

Introduction

This dispute relates to an Application for Dispute Resolution (application) by the landlord and the tenant who are both seeking remedy under the *Residential Tenancy Act* (Act) for the following:

- Order of possession for a 1 Month Notice to End Tenancy for Cause dated January 31, 2023 (1 Month Notice),
- Filing fee of \$100,
- Cancel the 1 Month Notice.

The parties listed on the cover page of this decision attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and all participants were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing. The decision will be emailed to both parties.

As the tenant's filing fee was waived, the only filing fee to be considered will be the landlord's filing fee.

Issues to be Decided

- Should the 1 Month Notice be cancelled or upheld?
- Should an order of possession be granted?
- Is the landlord entitled to the filing fee?

Background and Evidence

The tenancy began on April 1, 2014. The tenant wrote in their application that they were served on January 31, 2023, with the 1 Month Notice. The effective vacancy date of the 1 Month Notice is listed as February 28, 2023, which has passed. There is one cause listed as follows:

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

The Details of Cause section reads as follows:

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):

Tenant is hoarding in his unit. On 28 October 2022, Tenant's unit was inspected and the hoarding issue was brought to his attention and he was advised to de-clutter. On 27 January 2023, a subsequent inspection of Tenant's unit was conducted. The morning of the inspection, Tenant was observed removing many items from his unit and "stashing" them in the underground parking, the building storage area, and his vehicle, obviously understanding that his hoarding issue exists.

A hoarded unit presents a very clear health and safety risk to all occupants in the building. The Landlord must take the appropriate action to ensure the health and safety of everyone resulting in the service of this notice on the Tenant.

The tenant did not dispute the 1 Month Notice until February 13, 2023. The tenant was advised that this was beyond the 10-day timeline provided for under the Act, which I will address later in this decision.

The landlord was asked to present their evidence related to the breach of a material term and were unable to refer to a breach of a material term of the tenancy agreement. As a result, I reviewed the Details of Cause, which says in part:

"Tenant is hoarding...A hoarded unit presents a very clear health and safety risk to all occupants of the building."

[Reproduced as written]

The landlord is a housing society for senior citizens.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, as the tenant failed to dispute the 1 Month Notice within 10 days of January 31, 2023, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date under section 47 of the Act. The effective vacancy date was February 28, 2023, which has passed. The tenant continues to occupy the rental unit. Therefore, I dismiss the tenant's application without leave to reapply as the tenant failed to apply to dispute the 1 Month Notice on time.

Secondly, I will now address the 1 Month Notice. It is signed and dated and includes one cause listed. Pursuant to section 68(1) of the Act, I amend the notice to include a second cause, namely, "Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

I based this amendment on the wording of the Act, which I find the tenant knew or ought to have known that the Details of Cause also set out the cause listed related to health and safety concerns for others in the building, which in this matter are senior citizens. Therefore, I find there is an obvious safety risk when there is hoarding within a rental unit within a building occupied by other senior citizens as hoarding can lead to fires and the inability for firefighters to access a fire due to blockage caused by hoarding. I find that this puts all senior citizens in the building at risk, which is unreasonable.

Therefore, I find the amended 1 Month Notice to be valid, and that it complies with section 52 of the Act. I find that I do not need to consider the 1 Month Notice further and I end the tenancy as of February 28, 2023, the effective date listed on the 1 Month Notice.

I grant an order of possession pursuant to section 55 of the Act for **June 30, 2023 at 1:00 p.m.**

If the tenant fails to vacate the rental unit, the tenant is reminded that they could be liable for all costs associated with enforcing the order of possession, including court and bailiff costs.

As the landlord's application was successful, I grant the landlord the **\$100** filing fee pursuant to section 72 of the Act. Pursuant to section 62(3) of the Act, I find the tenant's security deposit of \$350 is now \$250 effective immediately as I authorize the landlord to retain \$100 from the security deposit in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenant's application was dismissed without leave to reapply.

The landlord's application was successful.

The tenancy ended February 28, 2023. The landlord is granted an order of possession effective June 30, 2023 at 1:00 p.m.

The landlord has been authorized to retain \$100 from the security deposit indicated above.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 9, 2023

Residential Tenancy Branch