



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, MNDCT, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") under Sections 47 and 62 of the Act;
2. An Order for compensation for a monetary loss or other money owed under Section 67 of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, his support, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice attached to the Tenant's door on January 17, 2023, the Tenant confirmed receipt on January 17, 2023, served on January 17, 2023;

- the Tenant's Notice of Dispute Resolution Proceeding package and evidence personally served in early February 2023, the Landlord confirmed receipt, sufficiently served on February 4, 2023;
- the Landlord's evidence package personally served on an unknown date, the Tenant confirmed receipt on May 1, 2023, served on May 1, 2023.

Pursuant to Sections 71(2)(b), 88, and 89 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the One Month Notice. I advised that not all the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request to cancel the One Month Notice and the claim for recovery of the application filing fee at this proceeding. The Tenant's other claim is dismissed with leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on July 28, 2020. Monthly rent is \$800.00 payable on the first day of each month. A security deposit of \$400.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The effective date of the One Month Notice was February 28, 2023.

The Landlord provided further details of the causes to end this tenancy as:

On August 11, 2022 the tenant [tenant name] who was occupying a room in the house basement and sharing common areas with the tenant [Tenant] contacted me and brought to my attention that he can no longer live in our basement and will be moving out in 3 days, on Aug 14th. According to [tenant name] the reason for this sudden decision was that he was no longer feeling safe co-living with [Tenant]. [tenant name] also added that his use of the shared kitchen was limited due to [Tenant]'s constantly having a visitor so [tenant name] couldn't have reasonable use of common areas and felt that he can no longer have quiet enjoyment of his rental unit. This situation has placed us as Landlords in a position where we lost a tenant and revenue from the room rental for the month of September at minimum. Our worries and reason for this notice to end tenancy stems from reasonable concern that filling vacancy for the 2nd basement room may end up with the same tenancy issues so we have no choice but to look for a different approach to fill in vacancy.

The Landlord repeated the story set out in the details of the One Month Notice, and stated there is potential violence in the rental unit with the Tenant. The Landlord's written statement uploaded in his documentary evidence stated that "*the main reason we provided one month's notice to [Tenant] is due to being worried about quiet enjoyment and safety of any future tenants who will be sharing our basement with him.*"

The Landlord's support testified that the issues were that the Tenant took some of the other tenant's things and he was verbally abusive to him. The police were never involved, the other tenant moved out in the middle of August 2022.

The Landlord got another tenant in around September 2022, and he stayed for about one month. This new tenant did not give much of a reason to the Landlord.

The Landlord's support stated that this One Month Notice is the second notice served on the Tenant. The first notice was missing an address, and it was denied.

The Tenant testified that him and the tenant got along well. He said one month before the tenant moved out, he returned home, and the tenant was there, and he was sick. A couple days later, he was no where to be found, and the Tenant and his girlfriend came down with Covid-19. The Tenant was annoyed with his roommate. He did not tell the Tenant that he had Covid-19, and subsequently, the Tenant missed some days at work. The Tenant sent his roommate a text about this.

A few days later, the tenant had told the Landlord that he would be moving out. The Landlord feels unsafe, and it was stressful having to find a new tenant.

The Tenant has been living in the rental unit for close to three years. He stated he has had five or six roommates. He has never had issues with the past roommates, nor has he had issues with the two roommates after the tenant left.

The Tenant is going to school doing his third-year electrical apprenticeship and does not have a lot of money. He projected that he will be done his apprenticeship by August 2024. He said this whole dispute resolution process has been stressful, and he just wants to put it behind him and continue his tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Landlord's notice: cause

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

...

- (d) *the tenant or a person permitted on the residential property by the tenant has*

- (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

...

The Landlord's One Month Notice was served on January 17, 2023. I find the One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied to dispute the One Month Notice on January 27, 2023 which is within 10 days after the date the Tenant received the notice.

The Landlord testified that a tenant told him that the Tenant was abusive with him, however, there has never been any police involvement with the Tenant. The Landlord said he feels unsafe. The Tenant has been an occupant in the Landlord's basement suite for close to three years. He stated he has not had any problems with past roommates and with the two other roommates since the tenant left.

The Landlord needs to provide more than just possibilities or suppositions that the Tenant is a problem. I find the Landlord has not proven on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property. I cancel the Landlord's One Month Notice and the tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in his claim, he is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

The Tenant may withhold \$100.00 from one month's rent to recover his application filing fee.

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

Dated: June 05, 2023