



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910101041: OPC, FFL

File #910103182: CNC-MT

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a One-Month Notice to End Tenancy signed on January 26, 2023 (the “One Month Notice”); and
- return of the filing fee pursuant to s. 72.

The Tenant files her own application seeking an order pursuant to s. 47 of the *Act* cancelling the One Month Notice and s. 66 for more time to do so.

A.C. appeared as the Landlord. V.G. appeared as the Tenant. The Tenant had the assistance of A.C., who acted as her advocate.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Should the Tenant be provided additional time to dispute the One Month Notice?
- 2) Is the One Month Notice enforceable?
- 3) Is the Landlord entitled to her filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

1) *Should the Tenant be provided additional time to dispute the One Month Notice?*

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by giving a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to s. 47(1)(e)(iii) (illegal activity that has jeopardized an unlawful right or interest) of the *Act*. Under s. 47(4) of the *Act*, a tenant has 10 days after receiving a notice to end tenancy issued under s. 47 to dispute the notice.

I am advised by the Landlord that the One Month Notice was posted to the Tenant's door on January 26, 2023. The Tenant acknowledges receiving it on either January 26th or 27th. I find that the One Month Notice was served in accordance with s. 88 of the *Act* and was received by the Tenant on January 27th.

Rule 2.6 of the Rules of Procedure establishes the time at which an application is considered to have been made. It states that an application is considered made when the application is submitted, and the application fee paid or the fee waiver submitted. Review of the information on file shows the Tenant submitted her application on February 21, 2023 and applied for her fee waiver on the same date.

The file also indicates shows that the fee waiver had been rejected and that the Tenant was to pay the filing fee. This was not done such that the Residential Tenancy Branch considered the application abandoned. However, the file also notes that that Tenant was not provided with notice that her fee waiver had been rejected. Ultimately, the issue was resolved on May 30, 2023 when the decision of the fee waiver was reversed.

As explained by the Tenant's advocate, the Tenant was in hospital from January 29, 2023 to February 16, 2023 such that she was unable to file the application on time. The Tenant's evidence also includes a letter dated February 16, 2023 from a physician noting the Tenant was admitted into hospital on January 29, 2023. I am told the Tenant contacted the Landlord to inform her she was in hospital, which was acknowledged by the Landlord. It was further explained that the fee waiver issue was an administrative error with the Residential Tenancy Branch.

Section 66(1) of the *Act* permits the Director to extend a time limit under the *Act*, but only in exceptional circumstances. However, s. 66(3) of the *Act* prevents the Director from doing so when a tenant has filed to dispute a notice to end tenancy after the effective date of that notice.

Policy Guideline #36 provides guidance on what may be considered an exceptional circumstance, setting out the following criteria to be considered:

- the party did not wilfully fail to comply with the relevant time limit;
- the party had a bona fide intent to comply with the relevant time limit;
- reasonable and appropriate steps were taken to comply with the relevant time limit;
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party;
- the party has filed an application which indicates there is merit to the claim; and
- the party has brought the application as soon as practical under the circumstances.

In these circumstances, I find that the Tenant ought to be permitted more time to dispute the One Month Notice. I accept, as demonstrated in the letter from the physician, that the Tenant was admitted in hospital from January 29, 2023 to February 16, 2023, such that the delay in filing is not wilful. I further accept that the Tenant filed her application as soon as she was able after being discharged.

I further find that s. 66(3) of the *Act* does not apply as the Tenant did submit her fee waiver on February 21, 2023, such that the application was made prior to the effective date of the One Month Notice. It appears that there was an administrative issue with the Residential Tenancy Branch such that the fee waiver was rejected improperly, which was corrected when it was subsequently granted on May 30, 2023.

I permit the Tenant additional time to dispute the One Month Notice pursuant to s. 66(1) of the *Act*.

2) Is the One Month Notice enforceable?

As mentioned above, the One Month Notice was issued on the basis of alleged illegal activity that jeopardized a lawful right or interest of the landlord or another occupant. When a tenant files to dispute a One Month Notice, the onus is on the landlord to prove that the notice was issued in compliance with the *Act*.

I am provided with a copy of the One Month Notice, which states the following as the cause of eviction:

Details of the Event(s):
All conversations have been saved and are available upon request by the RTB
Jan 24, 9:58am tenant said ceiling fan not working(in person on Monday); landlord said repairs on Sat and asked what time
4:36pm tenant said 9am
Jan 26, 8:59am landlord texted tenant to confirm entry for repair of ceiling fan
Jan 26, 9:20am tenant states "what gives you the authority to enter without my permission?"
9:42am landlord quotes directly from RTB stating rules about giving notice and follows exact rules with time, date and reason for entry into the unit and quotes the tenant's responsibilities in allowing the landlord to enter the unit
9:53am tenant states "I have not even given my notice to you, so you have absolutely NO RIGHT! Who do you think you are dealing with? An idiot?"
9:54am landlord restates tenant themselves said ceiling fan was not work and tenant said repairs could happen Sat at 9am
10:12am landlord calls RTB and speaks to an agent to ensure correct procedures are followed
RTB agent tells landlord to file and serve an RTB33 form to the tenant stating that the tenant has jeopardized the rules of the RTB
10:46am landlord calls RTB to ensure how to serve notice and is informed by RTB agent to attach it to the outside of the unit door

As explained by the Landlord, the Tenant reported a repair issue with her ceiling fan on or about January 24, 2023. Through subsequent correspondence, the Landlord says the Tenant denied her access to the rental unit. The Landlord says that this prompted her to issue the One Month Notice such that the Tenant was unlawfully denying access to the rental unit.

Policy Guideline #32 provides guidance on what may constitute "illegal activities" and states the following:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The problem with the Landlord's position is that she fails to demonstrate that the Tenant has engaged in any illegal activity whatsoever. Even if I were to accept the Tenant denied entry, there may have been circumstances explaining that, such as improper notice or being unwell or unable to participate in the inspection. Mere denial of entry does not constitute illegal activity.

Further, I am referred to text messages in evidence which the Landlord says were threatening in nature. I have reviewed the text messages, which demonstrate poor communication between the parties that became heated at times once the Landlord served the One Month Notice. I agree, some of the messages were less than friendly. However, a message included from the Tenant's daughter explain that the Tenant had been agitated and dealing with stress following the death of three close friends. A further message from the Tenant apologizes for her actions.

I find that the Landlord has failed to demonstrate the Tenant was engaged in any illegal activity at all, much less any illegal activity warranting the end of the tenancy.

The One Month Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*. Accordingly, the Landlord's application for an order of possession is dismissed without leave to reapply.

3) *Is the Landlord entitled to her filing fee?*

As the Landlord was unsuccessful in her application, I find she is not entitled to her filing fee. The Landlord's claim under s. 72 of the *Act* is dismissed without leave to reapply.

Conclusion

The Tenant is permitted more time to dispute the One Month Notice.

The One Month Notice is unenforceable and is hereby cancelled. The tenancy shall continue until ended in accordance with *Act*.

The Landlord's application is dismissed without leave to reapply in its entirety.

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: June 29, 2023

Residential Tenancy Branch