



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and was given a full opportunity to provide testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the One Month Notice, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the One Month Notice be cancelled? If no, is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover its filing fee?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy began on November 1, 2018.

On February 28, 2023, the tenants were served with a One Month Notice, dated February 15, 2023. The tenants filed an application to dispute the One Month Notice within the timelines permitted under the Act.

The One Month Notice was issued on the following ground:

- breach of a material term that was not corrected within a reasonable time after written notice to do so.

The landlord's agent provided the following testimony and evidence:

- she has been the property manager for just over one month and there have been quite a few complaints against the tenant in that time in regards to the tenant smoking in the unit.
- Looking through the tenants' files, there was a previous breach letter issued November 18, 2022 for smoking in the unit.
- On February 28, 2023, the tenant was issued a One Month Notice after a routine inspection found evidence of the tenant smoking in the unit again.
- The rental unit is not the right building or right fit for the tenant.
- On April 23, 2023, after the issuance of the One Month Notice, there was an additional complaint against the tenant in regard to loud music.

On behalf of the tenant, the tenant's advocate submits as follows:

- The landlord has not presented any evidence to support the claims that the tenant has been smoking in the unit.
- At the last inspection referred to by the landlord, there was no mention of any breach relating to smoking.
- The tenant was sent an e-mail after the inspection and just asked to remove foil off a window, no mention of smoking.
- The tenant has not been smoking inside the unit.
- The complaint from a neighbor in regards to the smell of smoke was just the smell from the tenant's clothes.
- The tenant has submitted an e-mail from the neighbor stating that they have worked out the issue and that there has not been any excessive noise or smell of smoke coming from the unit.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

I find the testimony and evidence presented by the landlord in this hearing to be very thin. The landlord provided insufficient evidence in support of the allegation that the tenant was found to be smoking in the unit at the latest inspection. No evidence was submitted in support such as photos of ashtrays or other signs of smoking occurring in the unit. There is also only one complaint letter submitted in regard to smoking and that was subsequently taken back by the other occupant.

I find that the landlord failed to prove sufficient grounds to issue the One Month Notice. The landlord's application for an order of possession is dismissed. The landlord's application to recover the filing fee is also dismissed.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenants may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenants application to cancel the landlord's One Month Notice, dated February 15, 2023, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 06, 2023

Residential Tenancy Branch