



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenant seeks:

- an order cancelling a One Month Notice for Cause to End Tenancy dated March 15, 2023 (1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for the Application from the Landlords.

The two Landlords (ST and JT) and Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (RoP). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and his evidence (NDRP Package) on the Landlords by registered mail on April 12, 2023. The Tenant provided the Canada Post receipt and tracking number to corroborate his testimony on service of the NDRP Package. Although the Tenant did not serve the NDRP Packages on each of the Landlords separately in accordance with the provisions of Rule 3.1 of the RoP, both Landlords were present at the hearing and JT acknowledged that both he and ST had received and reviewed the NDRP Package. As such, I find the NDRP Package was sufficiently served on each of the Landlords in accordance with the provisions of section 71(2)(b) of the Act.

Preliminary Matter – Service of Landlords' Evidence on Tenant

ST stated the Landlords served the Tenant with their evidence, on a USB device in person, but she could not recall the date the Tenant was served with the device. The Tenant stated he did not have the playback equipment required to open the digital device the Landlords' served on him. ST admitted the Landlords did not contact the Tenant to verify he was able to open and view the Landlords' evidence. Rule 3.10.05 of the RoP states:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

[emphasis in italics added]

The Landlords chose to serve their evidence on a digital device. The Landlords admitted they did not confirm, before the hearing, that the Tenant had the playback equipment or was otherwise able to gain access to the Landlords' evidence that was stored on the digital device. As the Landlords did not comply with Rule 3.10.5, I find the Landlords' evidence is not admissible for this proceeding. I told the Landlords that they had the option of giving oral testimony on the contents of the Landlords' evidence or, alternatively, call a witness or witnesses to provide testimony on the contents of the Landlords' evidence.

Issue to be Decided

- Is the Tenant entitled to an order for cancellation of the 1 Month Notice?
- Is the Tenant entitled to recover the filing fee for the Application?
- If the Tenant is not entitled to an order for cancellation of the 1 Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed there was no written tenancy agreement between the Landlords and Tenant. The parties agreed the tenancy commenced on January 1, 2018. The Tenant stated the rent when the tenancy started was between \$500.00 and \$550.00 per month. The Tenant stated one of the other two tenants gave notice and he was required to pay \$700.00 per month. The Tenant stated there were two other tenants and the girlfriend of one of the other tenants (MK) who were living in the rental unit when he moved in. The Tenant stated he took the place of MK on the tenancy agreement that was existing between MK and the other two tenants living in the rental unit at that time. The Tenant stated he lives in the upper floor where there are three bedrooms. The Tenant stated he shares a kitchen and living room with the other tenants in the upper rental unit. The Tenant stated there is a lower rental unit that he believes has three bedrooms.

JT stated there are two suites in the residential premises. ST stated the Tenant is one of three tenants living in the upper suite. ST stated the total rent currently charged for the upper floor \$1,850.00 of which the Tenant pays \$700.00, the second tenant (AW) pays \$550.00 and the third tenant (IA) pays \$600.00 per month. ST stated MK and two other persons were the first three tenants who moved into the upper rental unit as a group. ST stated that none of the original three tenants gave the Landlords notice that they were ending the tenancy before they moved out. JT stated that, when one of the tenants were moving out, there was someone else who would move into the rental unit to replace the person who moved out. JT stated the Landlords live a fair distance from the residential premises and were not always aware of what was happening at the residential property.

Analysis

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Pursuant to section 6.6, the Landlords have the onus to establish, on a balance of probabilities, that there is cause to end the tenancy.

The 1 Month Notice lists the Tenant as the only tenant of the rental unit. The Landlords admitted there was no tenancy agreement between the Tenant and the Landlords. The Tenant stated he took the place of MK on the tenancy agreement that was existing between MK and the other two tenants living in the rental unit at that time.

Section 13(1) of the Act states:

13(1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

The Landlords did not comply with the requirements of section 13(1) of the Act. The Landlords assumed the risk of renting the rental unit to tenants in the absence of a written tenancy agreement documenting the names of the tenants and the terms of the tenancy. As such, the Landlords must prove, on a balance of probabilities, that the Tenant was the only tenant to the tenancy agreement for the rental unit. The Landlords did not provide any documentation whatsoever, or call any witnesses, to establish the Tenant was the sole tenant to a tenancy agreement or, alternatively, whether the Tenant, AW and AI are co-tenants on a single tenancy agreement that commenced with the original three tenants. I find the Landlords have not established, on a balance of probabilities, that there is a tenancy agreement between only the Tenant and the Landlords. Based on the foregoing, I find the Landlords have not proven, that the 1 Month Notice was valid to end the tenancy with the Tenant. As such, I find the Tenant has been successful in the Application and I order the 1 Month Notice to be cancelled. The tenancy continues until it is lawfully ended in accordance with the Act.

As the Tenant has been successful in the Application, I award the Tenant the filing fee of \$100.00 for the Application pursuant to section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to withhold \$100.00 from his monthly rent on a one-time basis in satisfaction of this amount. The Landlords may not serve the Tenant with a Ten Day Notice for Unpaid Rent and/or Utilities when the Tenant makes the \$100.00 deduction from his rent.

Conclusion

The 1 Month Notice is cancelled. The tenancy continues until it is lawfully ended in accordance with the Act.

As the Tenant has been successful in the Application, I award the Tenant the filing fee of \$100.00 for the Application. I authorize the Tenant to withhold this amount on a one-time basis from their monthly rent on a one-time basis in satisfaction of this amount.

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: August 06, 2023

Residential Tenancy Branch