



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT, CNR, FFT

Introduction

This hearing relates to the Tenants' June 25, 2023 and July 28, 2023 Applications for Dispute Resolution seeking remedy under the *Residential Tenancy Act* (Act) for the following:

- to cancel a One Month Notice to End Tenancy for Cause (One Month Notice),
- to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice),
- reimbursement of the filing fee for both applications.

Issue(s) to be Decided

- Does the 10-Day Notice end the tenancy?
- Does the One Month Notice end the tenancy?
- Are the Tenants entitled to recover the filing fee?

Service

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Background and Evidence

The rental unit is located in a multi-family dwelling residence (the House), with a total of four units, two on the upper floor and two on the main level. The rental unit is one of the upper units. Evidence was provided showing that this tenancy was renewed on October 1, 2021, prior to which there was an agreement for over ten years. The current monthly rent is \$1,300.00 due on the first day of each month. The Tenants paid a security deposit in the amount of \$275.00 and pet damage deposit in the amount of \$250.00, which the Landlord continues to hold in trust.

On June 16, 2023, the Landlord served a One Month Notice with an effective date of August 1, 2023. The One Month Notice indicates the following reasons to end the tenancy:

- The Tenants significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- The Tenants seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
- The Tenants put the Landlord's property at significant risk.
- The Tenants caused extraordinary damage to the unit.
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

Details of Cause state:

- Insurance company has denied coverage due to hoarding issues.
- The Tenants failed to keep the suite in a healthy and safe condition.
- The Tenants had years to act, however, failed to do so.

On July 25, 2023, the Landlord served a 10-Day Notice with an effective date of August 10, 2023. The Landlord testified that they served the 10-Day Notice as the Tenants failed to pay a security deposit in the amount of \$400.00 due on December 31, 2021. The Landlord testified there is no outstanding rent due and the 10-Day Notice is not for unpaid rent.

SO testified that they paid a pet damage deposit of \$250.00, as they only have pet fish and therefore the parties negotiated the payment of \$250.00. SO testified that on December 30, 2021, they paid a damage deposit of \$275.00, which the Landlord continues to hold in trust. The Landlord confirmed the above noted agreement and payments. The Landlord stated that the amount should be higher given monthly rent is in the amount of \$1,300.00.

The Landlord testified that three years ago their insurance company completed an inspection of the property, to include all rental units. The Landlord testified that the Tenants' rental unit did not meet minimum standards for insurability during the October 2020 inspection, and the Landlord was at risk of losing insurance coverage unless the rental unit was meeting standards by April 24, 2021. The Landlord testified that the Tenants failed to act and as a result they lost their insurance coverage and proceeded to have no coverage for over a year. The Landlord testified that they secured insurance coverage as of August 8, 2022. The Landlord testified that the new insurance company

requires pictures of the interior and exterior of the rental unit, otherwise they are at risk of losing coverage.

The Landlord testified that they are concerned with the Tenants hoarding habits, to include piling of excessive materials which is resulting in narrow pathways, fish tanks all over the place, and a messy bathroom full of fish supplies. The Landlord provided photographs of the exterior of the unit and testified that they do not have photographs of the interior as they lost their cell phone.

The Tenant testified that the condition of the current rental unit is clean and reasonable. The Tenants provided photographs of the interior of the unit and testified that they continue to maintain the rental unit as shown in the documentary evidence. The Landlord testified that the photographs are staged and do not provide an accurate account of the mess and hoarding.

The Tenant testified that they do have many pet fish in the rental unit as they assist with SO's health condition, specifically in keeping him calm and focussed. The Tenant testified that the pet damage deposit was negotiated with the Landlord having full knowledge of their pet fish.

The Tenant testified they take care of the rental unit and invest in tenancy insurance on an annual basis.

Analysis

- Does the 10-Day Notice end the tenancy?

The parties agree that the amount specified on the 10-Day Notice did not represent any rental arrears owed by the Tenant. Rather, it represented the amount of the security deposit which the Landlord alleges is unpaid.

A security deposit is not rent. It is an amount held in trust by the Landlord that must be returned (or claimed against) at the end of the tenancy. As such, there is no basis for this notice to be served under the Act. Accordingly, I cancel the 10-Day Notice.

- Does the One Month Notice end the tenancy?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential

Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenants disputed this notice on June 25, 2023, and since I have found that the One Month Notice was served to the Tenants on June 16, 2023, I find that the Tenants have applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

Although the Landlord's testimony focused on the Tenants' hoarding excessive materials that are posing risk, I find the Landlord did not provide documentary evidence to prove sufficient grounds for ending the tenancy on this basis. On the contrary, I find the Tenants established the well-kept state of the rental unit by providing photographs depicting reasonable conditions. I find the Landlord did not prove cause as per Section 47 of the Act, for extraordinary damage, for placing the Landlord's property at risk, or for seriously jeopardizing the health or safety, or lawful right of another occupant or the Landlord.

I find that the concerns related to lack of insurance coverage have been resolved. With the Tenants improving the state of the rental unit and insurance coverage in place since August 2022, I find the Landlord's property is not at risk and these are not grounds for ending the tenancy. There is no evidence before me that the Landlord's insurer is not satisfied with the current state of the rental unit.

I find the testimony of both parties confirms payment of the security deposit and pet damage deposit as agreed upon by the parties in October 2021. Further, I find the Landlord's testimony was lacking in the exact amount that is outstanding, nor did the Landlord provide any documentary evidence to prove a different amount that is owed. I am not satisfied that any amount is outstanding. Further, given the Landlord failed to raise this issue from October 2021 to June 2023, I find they were satisfied in receiving the agreed upon payment.

I find the Landlord did not provide sufficient evidence to prove the Tenants significantly interfered with or unreasonably disturbed another occupant or the Landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

Therefore, the Tenants' application is granted for cancellation of the Landlord's One Month Notice under section 47 of the Act.

The One Month Notice of June 12, 2023 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

- Are the Tenants entitled to recover the filing fees?

As the Tenants' applications had merit, I grant the Tenants the recovery of the \$100.00 filing fee on one of their applications, per section 72(2) of the Act. I find one of the filing fees was unnecessarily incurred, as the Tenant could have simply amended the first claim.

The Tenants may deduct this amount from one future month's rent in full satisfaction of the recovery of the cost of the filing fees.

The Tenants should inform the Landlord when making this deduction so that the Landlord has no grounds to serve a 10 Day Notice to End Tenancy for Unpaid Rent in that event.

Conclusion

The Tenants' applications are granted for cancellation of the Landlord's One Month Notice under section 47 of the Act and the 10-Day Notice under section 46 of the Act.

The One Month Notice of June 12, 2023 is cancelled and is of no force or effect.

The 10-Day Notice of July 25, 2023 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

I order the Tenants to deduct \$100.00 from one future month's rent in full satisfaction of the recovery of the cost of the 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 *Residential Tenancy Act*.

Dated: September 20, 2023

Residential Tenancy Branch