



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, CNR, FFT

Introduction

This hearing dealt with the Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act;
- cancellation of the Landlord's One Month Notice End Tenancy under section 47 of the Act; and
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act.

Issues to be Decided

Should the Landlord's One Month Notice to End Tenancy be cancelled?

Should the Landlord's 10 Day Notice to End Tenancy be cancelled?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

The Tenant served the Landlord with each Dispute Resolution proceeding package by Canada Post registered mail on August 18, 2023, and November 9, 2023. The Tenant submitted copies of the Canada Post customer receipts containing the tracking numbers to confirm this service.

The parties acknowledged receipt of the other party's evidence.

I have reviewed the evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision.

Evidence was provided showing that this tenancy began on May 1, 2015, and is currently continuing on a month-to-month basis. The Tenant's monthly rent obligation was set forth in the tenancy agreement in 2015 as \$1,350.00 due on the first day of the month. The 2015 tenancy agreement provided for a rent reduction to \$1,100.00 for the Tenant providing specified maintenance services on the property. The Landlord stated that the Tenant's services were "terminated" in 2022. The Landlord thereafter increased the rent effective February 1, 2023, to \$1,275.00. A copy of the rent increase notice was submitted in evidence.

1. One Month Notice to End Tenancy for Cause

The Landlord issued a One Month Notice to End Tenancy for Cause on August 1, 2023 with an effective date of September 1, 2023. The Landlord testified that the Tenant was served with the Notice on August 1, 2023. The Notice states that the Tenant had failed to make required repairs to the unit. A copy of the Notice was submitted in evidence.

The Notice details a specific instance of the Tenant's personal property falling on the Landlord's vehicle in July 2022 and causing damage. The Landlord stated that the Tenant had promised to pay the \$300.00 deductible he had incurred, but to date this obligation remained unpaid.

The Notice also describes an incident occurring in 2018, shortly after the Tenant adopted a dog at the request of the Landlord so that his dog would have a companion. The Landlord states in the Notice that in 2018 the Tenant's dog broke panes of glass located in the dining room and the bedroom windows, and to date the Tenant had not repaired or paid for the damage.

The Landlord stated his main concern and reason for issuing the One Month Notice was that the Tenant's dog had become increasingly more aggressive toward his dog and other individuals. He stated the Landlord's dog could not be contained adequately within the Tenant's rental unit as the dog was able to "open doors" and "chew metal" door knobs in order to open doors. The Landlord stated that he had closed the door connecting the main level living space where he resides to the stairwell that connects to the lower level rental unit in an effort to keep the Tenant's dog in the rental unit. The Landlord testified that the Tenant's dog had allegedly attacked a child playing in the backyard and had also attacked his dog and a friend's dog. With respect to the child, the Landlord testified that as the Tenant's dog "did not draw blood," authorities were not called and medical attention was not sought for the child. The Landlord further stated that the Tenant's dog scratched his dog's cornea, but that a vet had treated his dog and there did not appear to be permanent damage.

The Tenant had testified that she has a baby gate in place at the juncture of the connecting stairs and her rental unit was to assist in keeping her dog contained within the rental unit. She had testified that the dog had not chewed metal door knobs for a few years, but had only exhibited this behavior when first adopted. She testified that her dog was 12 years old, weighed 85 pounds and stood approximately 1 ½ to 2 feet tall at the shoulder. She stated she first checks to determine if there was any one or other pet in the fenced backyard before letting her dog out and that she stays with the dog while in the yard. The Tenant testified that neither she nor the Landlord were present at the time of the alleged incident between her dog and the child, and it was unclear what had actually occurred. She further testified that the incident involving her dog and the Landlord's dog occurred when the Landlord invited her dog to be with his dog while she was not present.

2. 10 Day Notice to End Tenancy for Unpaid Rent

On November 5, 2023, the Landlord also issued a 10 Day Notice for unpaid rent in the amount of \$2,275.00 owing as of November 5, 2023. The effective date of the Notice was November 5, 2023. The Notice was served to the Tenant on November 5, 2023. A copy of the Notice was provided in evidence.

The Landlord testified that the period of unpaid rent covered by the Notice was from November 1, 2021 to November 1, 2023. The Tenant did submit a copy of her etransfer of rent for November 1, 2023, in the amount of \$1,275.00. The Landlord testified that the Tenant had been paying \$1,275.00 in rent only as of August 1, 2023. He stated that she had been short on rent prior to that time since November 1, 2021. The Landlord testified that he did receive notifications on his cell phone when the Tenant made rent payments by etransfer, but he did not check on how much the rent deposit that was made each month. The Landlord submitted copies of screen shots of the notifications he received on his cell phone when the Tenant made a rent payment but does not indicate the amount of the payment. He stated that when he did review the Tenant's record of rent payments, he realized that she had been "short" in an cumulative amount of \$2,275.00 as of November 1, 2023.

Upon inquiry, the Landlord admitted he was aware of the rental amount in the tenancy agreement (\$1,350.00) and the reduced rate (\$1,100.00) even though he did not have a copy of the tenancy agreement (he testified only the Tenant had a copy), and that he had increased rent from \$1,250.00 in 2022 to \$1,275.00 as of February 1, 2023, thereby acknowledging the monthly rental rate for 2022 and 2023. The Landlord stated he submitted evidence of the Tenant's rent payment history.

The Tenant testified she always paid her rent and paid on time. Tenant's counsel stated that the parties had had an agreement in which the Tenant was to deduct the cost of the internet/cable in the approximate amount of \$250.00 per month. Tenant's counsel states that this is what led to the Landlord's allegation of a short-fall in rent, but that the Landlord agreed to the deduction and when the parties decided to each utilize a

different provider. Therefore, counsel noted that in July 2023, the Tenant stopped taking the deduction for the cable/internet payment and has thereafter paid rent in full at the agreed-upon rate of \$1,2575.00 pursuant to the notice of rent increase effective February 1, 2023. Tenant's counsel states that the Tenant has not underpaid rent and the 10 Day Notice should be cancelled.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure addresses the standard and burden of proof in dispute resolution proceedings. Rule 6.6 states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means 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.

In this case, the Landlord bears the burden of proof on both the One Month and 10 Day Notices he issued to the Tenant to end the tenancy.

Should the Landlord's One Month Notice be cancelled?

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. I find the Tenant timely made her application for dispute resolution to cancel the One Month Notice.

Section 47(3) of the Act requires that the One Month Notice comply with section 52 of the Act. I find that the Landlord's Notice complies with section 52.

The parties dispute whether the Tenant's dog poses a danger to the Landlord, the Landlord's dog or any other individual. The Landlord stated that he checked off the box on the Notice form regarding the Tenant's failure to not make repairs as that which most closely approximated the issue regarding the Tenant's dog. Essentially, the Landlord testified, the Tenant's dog posed a threat of harm, that he had advised the Tenant

accordingly and she had not taken corrective action. Therefore, he issued the One Month Notice.

The Landlord bears the burden of proof to establish with sufficient evidence, by a balance of probabilities, that the Tenant's dog attacked the child, and/or other pets, as set forth in his Notice.

The Landlord did not contest the Tenant's testimony that he was not present when the child was allegedly attacked by her dog. It is noted that the Landlord testified that no authorities were called regarding the incident and the child sustained no injury. Furthermore, the issue regarding the Tenant's dog's interaction with the Landlord's dog appears to have been initiated by the Landlord's conduct in having the Tenant's dog in his home at a time when the Tenant was not in the rental unit. There was insufficient evidence as to what occurred when the Tenant's dog allegedly attacked the Landlord's dog to conclude that the Tenant's dog poses a threat of harm to the Landlord, his dog or the neighbor's dog.

I find that the Landlord has not provided sufficient evidence to sustain his burden of proof that the Tenant's dog poses a threat to the Landlord, his dog or other dogs or visitors. The One Month Notice issued August 1, 2023, is cancelled and is of no force or effect.

The Tenant is reminded that she must properly supervise and/or restrain her dog when not in the rental unit, and must take steps to insure that her dog remains in the rental unit and does not enter the Landlord's living quarters.

Should the Landlord's 10 Day Notice be cancelled?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5). I find that the Tenant timely applied for dispute resolution to cancel the 10 Day Notice issued November 5, 2023.

I find that the Landlord has not sustained his burden to establish with sufficient probative evidence that the Tenant has an unpaid rent obligation. The evidence establishes that the monthly rental rate had changed pursuant to the parties' agreements regarding the services the Tenant was to provide on the property and the deduction for internet/cable services. The Landlord also failed to timely review and track the Tenant's monthly rent payments for any deficiencies. I find the Landlord has failed to act in a timely manner in issuing a 10 Day Notice for unpaid rent allegedly accumulating since November 1, 2021. I further find that the Landlord has failed to

establish that the Tenant did not pay rent at the agreed-upon rate taking into account the parties' agreement for rent reduction regarding the cable/internet services.

The 10 Day Notice issued November 5, 2023, is cancelled and is of no force or effect.

Is the Tenant entitled to recover the filing fees for these applications from the Landlord?

As the Tenant was successful in both applications, the Tenant's request for authorization to recover the filing fee for the two applications from the Landlord under section 72 of the Act is granted.

Conclusion

The Tenant's applications to cancel the One Month Notice issued August 1, 2023 and the 10 Day Notice issued November 5, 2023, are each granted.

The One Month Notice issued August 1, 2023, is cancelled and is of no force or effect.

The 10 Day Notice issued November 5, 2023, is cancelled and is of no force or effect.

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

I order that the Tenant is authorized under section 72 to recover the filing fees for these two applications in the total amount of \$200.00 and may deduct that sum from her next monthly rent payment.

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: November 29, 2023

Residential Tenancy Branch