

DECISION

Introduction

The Tenant filed an Application 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 (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- an order to allow access to or from the rental unit for the Tenant or the Tenant's guests under sections 30 and 62 of the Act

The Landlord also filed an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Preliminary Matters

The Landlord was incorrectly named on the Tenant's Application for Dispute Resolution. I have amended the application accordingly.

The Tenant's agent stated that they did not serve the Landlord with their evidence in support of the application. Therefore, I will not consider the Tenant's documentary evidence.

The Tenant denied receiving the Landlord's Dispute Notice and Evidence. The Landlord testified that they served the Tenant by registered mail on December 15, 2023. They provided a receipt and Canada Post Tracking Number in evidence. I find that the Tenant was served by registered mail on December 20, 2023, based on sections 88, 89, and 90 of the Act.

The Tenant requested more time to dispute a 10 Day Notice to End Tenancy (10 Day Notice). The Tenant was never served with a 10 Day Notice. This application is dismissed without leave to reapply.

Background and Evidence

The tenancy started October 10, 1980, and is currently month to month. Current rent is \$892.00 per month due on the first of the month. The Tenant paid a security deposit of \$140.00. The tenant was served a One Month Notice to End Tenancy for Cause (1 Month Notice) on August 9, 2023. The 1 Month Notice was provided in evidence. The effective date of the 1 Month Notice was September 30, 2023. The Tenant filed an Application for Dispute Resolution on September 27, 2023.

The Tenant's agent testified that the Tenant was hospitalized and that is why they were late filing the Application. The Tenant is currently recovering and is not occupying the rental unit but intends to return when well enough to do so. The Tenant's agent testified that they contacted the Landlord regarding the 1 Month Notice on August 10, 2023, and told the Landlord that the Tenant was in hospital. They testified that the Landlord told them not to worry about the 1 Month Notice. The Landlord denied telling the Tenant's agent not to worry about the 1 Month Notice.

The Tenant's agents did not provide any evidence to establish that the Landlord was not allowing access to the rental unit during the tenancy.

The Landlord provided a copy of an addendum to the Tenancy Agreement detailing the rules of the tenancy. There is a spot on the document for the Tenant's initials. The Tenant did not initial the document. Rule #11 states that there is no smoking allowed in the rental unit or on the balconies.

The Landlord provided copies of emails from other occupants of the building. These emails detail numerous complaints about the Tenant smoking on her balcony. Pictures of the Tenant smoking were also provided in evidence. As a result, the Landlord gave 2 warning notices to the Tenant, one dated July 18, 2023, and the other July 26, 2023. Copies of both notices were provided in evidence. The Landlord also provided a photo of a no smoking sign in evidence. Both warning letters state that smoking is not allowed on the balcony. The Landlord testified that they received more complaints from other occupants regarding ongoing smoking by the Tenant on her balcony August 6-9, 2023. As a result, they issued the 1 Month Notice.

Analysis

Is the Tenant Entitled to More Time to Dispute the 1 Month Notice?

I find that the Tenant is not entitled to more time to dispute the 1 Month Notice. The Tenant's agents became aware of the 1 Month Notice on August 10, 2023. However the Tenant's agents did not file an Application for Dispute Resolution

until September 27, 2023. Given the number of complaints received by the Landlord regarding smoking, and the fact that the Landlord provided 2 warning notices to the Tenant prior to giving them a 1 Month Notice, I prefer the evidence of the Landlord that their intention was always to enforce the 1 Month Notice and I do not accept the evidence of the Tenant's agents that the Landlord told them not to worry about the 1 Month Notice.

The 1 Month Notice in evidence clearly states at the top of the document that the Tenant had 10 days to dispute the 1 Month Notice. The Tenant was in the hospital but her agents were aware of the 1 Month Notice and ultimately filed an Application for Dispute Resolution on behalf of the Tenant. Not explanation was given why the Application could not have been filed within the 10-day period other than that the Tenant was in the hospital, however I have found that the Tenant's agents were well aware of the 1 Month Notice and could have filed the Application. Therefore, I find that the Tenant did not file within the required time period and the Tenant's application is dismissed.

Is the Landlord Entitled to an Order of Possession for the Rental Unit?

The 1 Month Notice complies with the form and content requirements of section 52 of the Act. The Tenant's Application was dismissed however the Tenant's agents attended the hearing.

I note that one of the reasons listed on the 1 Month Notice was that the Tenant significantly interfered with or unreasonably disturbed other occupants. I have considered the evidence of the complaints from other occupants regarding smoking and note that the complaints establish that other occupants were disturbed by the smoke. I further note that the Tenant was given 2 warnings to stop smoking which she did not comply with. I find that the 1 Month Notice contained adequate reasons to end the tenancy for cause and that the Landlord has established that the 1 Month Notice was valid and effective.

The Landlord also listed a breach of a material term of the tenancy as an additional reason to end the tenancy. As I have already found the 1 Month Notice was valid and effective, I will not address this ground.

Other Relief

The Landlord provided a monetary order worksheet in evidence and listed 3 months of rent owing for use and occupancy as the Tenant did not vacate the rental unit on the effective date of the notice. The Landlord did not address the worksheet in their presentation, nor did they specifically request compensation in their application. Therefore, I decline to consider compensation for the Landlord and the Landlord is free to reapply for compensation.

I have ordered an end to the tenancy, therefore the Tenant's request for access to the unit is dismissed.

Is the Landlord Entitled to Authorization to Recover the Filing Fee for Their Application?

As the Landlord was successful in their application, they are entitled to recover the \$100.00 filing fee for their application. They are authorized to deduct the filing fee from the Tenant's security deposit.

Conclusion

I find the Landlord is entitled to an order of possession, which will be effective at 1:00pm on January 31, 2024.

Having been successful, I also find the landlord is also entitled to recover the \$100.00 filing fee paid to make the Application. The Landlord may deduct \$100.00 from the Tenant's security deposit in satisfaction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 5, 2024

Residential Tenancy Branch