

DECISION

Introduction

This hearing dealt with the Landlord's 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

This hearing also dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- Cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act
- An order for the landlord to make repairs to the rental unit under sections 32 and 62 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that the Landlord was served on October 2, 2023, by registered mail in accordance with section 89(1) of the Act and is deemed received the fifth day after the registered mailing. The Tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.
- I find that the Tenants were served on December 7, 2023, by registered mail in accordance with section 89(1) of the Act and is deemed received the fifth day after the registered mailing. The Landlord provided Proof of Service forms for each Tenant containing the Canada Post tracking Number.

Service of Evidence

- At the beginning of the hearing the Landlord confirmed they received the evidence from the Tenants. After the Tenants had provided their submissions and evidence, the Landlord advised that they never received any evidence from the Tenants. The Tenants advised they provided the Landlord with all evidence when they served the Proceeding Package. Both Tenants confirmed the Proceeding Package contained the evidence; however, no additional evidence could be provided to support this. Without additional evidence I am unable to confirm whether the Landlord received the evidence from the Tenants, and it would be prejudicial to the Landlord to allow the evidence to be considered if I am not certain they were aware of the evidence against them. Based on Rule of Procedure 3.17, I am excluding the Tenants' evidence from consideration as the Landlord never received it. I allowed the Tenants to provide oral testimony about what the evidence would have said.
- No evidence was received by the Residential Tenancy Branch from the Landlord.

Preliminary Matters

The following issues are dismissed with leave to reapply:

- An order for the landlord to make repairs to the rental unit under sections 32 and 62 of the Act

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 Notice to End Tenancy, I am exercising my discretion to dismiss this iss identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

- Updated Name for Tenant CM

Updated name of Tenant CM to include their preferred name.

- Updated Landlord's Name

Corrected Landlord's application to include correct spelling of their first name.

Issue(s) to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

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

Background and Evidence

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

Evidence was provided showing that this tenancy began on August 1, 2023, with a monthly rent of \$2,400.00, due on the first of the month, with a security deposit in the amount of \$1,200.00.

The Landlord served a One Month Notice for Cause on September 22, 2023, and indicated the Tenants seriously jeopardized the health or safety or lawful right of another occupant or the landlord (the "One Month Notice"). The Tenants advised they received the One Month Notice on September 23, 2023.

The Landlord's position is that after they came over with their boyfriend GP (the "Landlord's Boyfriend") to do some repairs in the rental unit, Tenant AH pushed the Landlord's Boyfriend out of the rental unit and physically blocked the door preventing the Landlord for being able to leave. The Landlord argued Tenant AH was standing in front of the door which prevented the Landlord from exiting. The Landlord argued eventually they were able to exit the rental unit after around 15 min.

The Tenants' position is that they never put their hands on the Landlord's Boyfriend and never physically harmed or touched the Landlord. Tenant AH argued that the Landlord was free to leave the rental unit at any time and eventually the Landlord did leave through the front door. The Tenants advised the Landlord was informed the Tenants did not feel comfortable with the Landlord's Boyfriend coming to the rental unit due to some text messages the Landlord's Boyfriend had sent to Tenant AH. The Tenants argued the Landlord's Boyfriend lied about who he was when he came to the rental unit and when the Tenants became aware of his identity they were concerned for their safety and asked him to leave. The Tenants argued that Tenant AH was in the living room and

not blocking the front door and Tenant CM was in their bedroom during the conversation with the Landlord after the Landlord's Boyfriend left the rental unit.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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 October 28, 2023, and since I have found that the One Month Notice was served to the Tenants on October 23, 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 Tenants and obtain an end to this tenancy.

The Landlord has submitted no evidence to support that the Tenants seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Both Tenants presented similar testimony that supported the Landlord was not restrained or prevented from exiting the rental unit. Without additional evidence from the Landlord, I find that the Landlord has failed to meet the burden of prove required to establish the grounds for the One Month Notice.

The Landlord mentioned some additional issues that have arose with the Tenants, but those issues were not listed the One Month Notice and they cannot form the basis for ending the tenancy.

Based on the above, the Tenants' application is granted for cancellation of the One Month Notice under sections 47 of the Act. The Landlord's application for an Order of Possession is dismissed without leave to reapply.

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

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenants' application is granted for cancellation of the One Month Notice under section 47 of the Act.

The One Month Notice of September 22, 2023 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Landlord's entire application is dismissed without leave to reapply.

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 9, 2024

Residential Tenancy Branch