

DECISION

Introduction

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

- cancellation of the Landlord's One Month Notice to End Tenancy for End of Employment (One Month Notice) under section 48 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

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 Unpaid Rent or Utilities (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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties acknowledged receipt of the Proceeding Packages.

Issues 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 Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit

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

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

Preliminary Matters

The Matter was adjourned on March 25, 2024, as the Tenant required translation services.

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.

The Landlord served a One Month Notice to End Tenancy for Cause (the Notice) on October 1, 2023. The Notice did not provide the Landlord's address for service.

On October 5, 2023, the Tenant applied to dispute the October 1, 2023 Notice, and a hearing was scheduled for January 29, 2024.

The Landlord served a second One Month Notice to End Tenancy for Cause (the Notice) on January 2, 2024. The Notice did not provide the Landlord's address for service.

On January 7, 2024, the Tenant filed a new application to dispute the January 2, 2024 Notice.

On January 9, 2024, the Tenant withdrew his application to cancel the October 1, 2023, Notice. On January 12, 2024, the Landlord provided confirmation to the RTB that a hearing was not required.

On January 16, 2024, the Landlord applied for an Order of Possession based on the October 1, 2023 Notice.

The Tenant submits that he withdrew his initial application as he thought the January Notice cancelled the October Notice. The Landlord indicated that they consented to the Tenant cancelling the dispute as they thought it meant the Tenant was moving out, they were not aware that the Tenant had disputed the January Notice.

The Tenant submits that he feels the Landlord is requesting to enter the rental unit too often and believes that once per year should suffice. The Tenant does not dispute refusing entry to the rental unit.

The Landlord submits that they have only completed occasional inspections, that they did not inspect the rental unit in 2022, however after receiving reports from the strata counsel that the Tenant was running an AirBnb out of the rental unit, they would like to complete regular inspections. The Landlord further submitted that they completed an inspection in April 2023 and August 2023. The Tenant has refused all other inspections.

Analysis

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.

I find that the October 2023 Notice is null and void as both the Landlord and Tenant consented to withdraw the application.

As the Tenant disputed the January 2, 2024 Notice on January 7, 2024; therefore, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act.

Section 47 (3) states that a Notice to End Tenancy for Cause must comply with section 52 of the Act. Section 52 of the Act requires all notices to end tenancy given by the Landlord to be in the approved form. In this case the #RTB-33 form, which requires the Landlord to include an address for service.

As the January 2, 2024 Notice did not contain the Landlord's address for service, I find that the Notice is invalid; therefore, the Tenant's application to cancel the January 2, 2024 Notice is granted.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

The Tenant submits that the Landlord should only be able to enter the rental unit once per year to conduct an inspection.

It is undisputed that the Landlord has only entered the unit once in April, and once in August 2023.

Section 29(2) states that a Landlord may inspect a rental unit monthly if the Landlord provides the prescribed notice.

The Tenant's submission that the Landlord only inspect the rental unit once per year is not only in contravention of the Act, but also patently unreasonable.

The Tenant's application to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed, without leave to reapply.

Both parties are advised that the Landlord has the right to serve another One Month Notice to End Tenancy should the Tenant continue to refuse entry to the rental unit.

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

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

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

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

Conclusion.

The Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 and 52 of the Act.

The One Month Notice of January 2, 2024, is cancelled and is of no force or effect.

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

The Tenant's application to suspend or set conditions on the Landlord's right to enter the rental unit under section 29 of the Act is dismissed, without leave to reapply.

I grant the Tenant authorization to retain **\$100.00** from May 2024's rent in satisfaction of the Monetary Order requested under section 72 of the Act.

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: April 17, 2024

Residential Tenancy Branch