



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, MT, CNC, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party. Both parties confirmed that they were aware of and understood the application filed by the other party. I find that these documents were duly served to one another in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue

At the outset of the hearing, the tenant clarified that he had applied for more time to make an application to cancel the 1 Month Notice in error. As such, the tenant withdrew this portion of his application and no further action is required for this portion of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to an order to recover their filing fee?

Is the tenant entitled to a monetary award for losses or damages arising out of this tenancy?

Is the tenant entitled to an order to recover his filing fee?

Background and Evidence

This tenancy began on February 1, 2014 on a month-to-month basis shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$400.00 payable on the 1st day of each month and a security deposit of \$200.00 was paid on January 9, 2014.

Both parties confirmed in their direct testimony and their submitted details of dispute that the landlords served the tenant with a 1 Month Notice dated July 15, 2015 by posting it to the rental unit door. The tenant confirmed in his direct testimony he found it posted to his rental unit door on July 16, 2015. The 1 Month Notice displays an effective end of tenancy date of August 31, 2015 and two reasons for cause which are:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site without the landlords' written consent.

The landlords stated that the tenancy agreement was signed and dated which included a 1 page addendum with 5 additional terms. Tenancy addendum term #5 states,

Tenant is required to have and maintain tenant's insurance with a minimum \$1,000.000 liability coverage. A copy of policy is to be provided to landlord.

The tenant confirmed in his direct testimony that he was given numerous verbal warnings from the beginning of the tenancy to obtain and maintain this insurance. The tenant confirmed receiving the landlord's written notice dated June 15, 2015 requesting the tenant to obtain the insurance within 30 days or be subject to being served a 1 Month Notice.

The landlords argued that the term regarding insurance was a material term as it was in the written tenancy agreement in the attached addendum terms.

The tenant stated in his direct testimony that he was not aware of any additional addendum terms when he signed the tenancy agreement. The tenant stated that the copy that he was provided did not have an attached page of 5 addendum terms although the tenant confirmed that he did sign a copy of the submitted tenancy agreement. The tenant also stated that he was informed by a Residential Tenancy Branch Information Officer that this term requiring insurance was not considered a material term.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, the landlords stated that the tenant breached a material term of the tenancy agreement by failing to obtain and maintain personal liability insurance after written notice to do so. The tenant confirmed in his direct testimony that he received numerous verbal requests from the beginning of the tenancy to comply with the agreed term. The tenant also confirmed in his direct testimony that he received the landlords' written demand to obtain the insurance within a reasonable amount of time.

I find on a balance of probabilities that the 1 page of 5 addendum terms were in fact attached and agreed upon by both parties in this tenancy. The tenant provided in his documentary evidence a copy of the signed tenancy agreement that he stated was the real copy that was not altered by the landlord. I find in reviewing section 17 "additional terms" that both copies are identical in content and clearly shows that both parties signed and agreed to 1 page of terms listing 5 additional addendum terms. I accept the landlords' submissions that the tenant knowingly signed and acknowledged these addendum terms.

However, Residential Tenancy Branch Policy Guideline #8 states that a material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy and does not become material due to its inclusion in the written tenancy agreement. The landlord has provided written submissions that there was a requirement by the tenant to obtain and maintain tenant's insurance of \$1,000,000.00 as a material term of this tenancy. The landlord has provided a copy of a letter from his Insurance Company dated July 21, 2015 which stated,

Further to our conversation, in consideration of the coverage provided and the premium charged for the Building and Liability insurance, **the insurance company has requested** that all tenants have personal insurance for their contents and personal liability insurance with a minimum limit of \$1,000,000.00.

Based upon this letter, I find that the landlords have demonstrated that there was a request but no requirement for the landlords to have the tenant obtain personal insurance for the rental unit. I find that the landlords have not demonstrated that the landlords' insurance policy has been jeopardized by the tenant's failure to obtain tenant's insurance. As such and with no other reason provided other than its' inclusion as an addendum term, I find that the addendum term does not constitute a material term and is unenforceable. This portion of the landlords' notice is dismissed.

The landlords provided insufficient details of his reason for cause in that the tenant assigned or sublet the rental unit. As such, with no evidence to support this reason for cause, I find that this portion of the landlords' notice is dismissed.

The landlords' notice dated July 15, 2015 is set aside and is of no force and effect. The tenant shall continue. The landlords' application is dismissed. The tenant's application is granted. The tenant having been successful in this application is entitled to recovery of his filing fee of \$50.00 from the landlords.

The tenant also stated that he was seeking compensation for recovery for lost wages in preparing and participating for the conference call hearing. Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional. The tenant's monetary claim for preparing for and participating in conference call hearing are dismissed.

Conclusion

The landlords' application is dismissed. I grant the tenants' application to cancel the 1 Month Notice of July 15, 2015. This tenancy continues and the 1 Month Notice of June 15, 2015 is of no force or effect.

I issue a monetary award in the tenant's favour in the amount of \$50.00 to enable them to recover their filing fee. To implement this portion of my decision, I order the tenant to reduce his next scheduled monthly rent payment by \$50.00. This is a one-time reduction and monthly rent reverts to its previous level on the month following this \$50.00 reduction in rent.

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 22, 2015

Residential Tenancy Branch

