



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant attended with an assistant L.F.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution, served on the landlord by Canada Post registered mail. As such, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

The tenant acknowledged that he did not serve the landlord with his evidence, therefore I advised the tenant that I would not consider his documentary evidence submitted to the Residential Tenancy Branch as it had not been served to the respondent as required by the Rules of Procedure. The tenant was advised he could provide verbal testimony regarding his evidence.

The landlord stated that she served the tenant with her evidence by placing it in the tenant's mailbox on November 29, 2018, which was confirmed by the tenant.

Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed that there is no written tenancy agreement, only a verbal agreement. The current landlord assumed the tenancy in July 2016 when the rental property was purchased from the previous owner/landlord. The tenant testified that his tenancy began in June 2010. The rental unit consists of a house and yard. The current monthly rent is \$1,150.00 payable on the first of the month. The tenancy is on a month-to-month basis. No security deposit was paid by the tenant.

The One Month Notice dated September 29, 2018, submitted into evidence by the tenant, states an effective move-out date of October 29, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property.*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The "Details of Cause" section of the notice provides the following additional details pertaining to the reasons for ending the tenancy, as follows:

Three day warning notice to take care of following issues delivered on the 20th Sep 2018 was ignored = smoking inside house which is injurious to my health

- *maintain [sic] yard of tall shrubs & grass & morning glory climbing into siding.*
- *Interior of house is never cleaned and finally repair to gutter of storage to prevent leaking not done*

The tenant confirmed he received the One Month Notice served to him in person by the landlord but he was unsure if it was on September 29 or 30, 2018.

The landlord's documentary evidence consisted of three pictures. Two pictures show a dried up, dead-looking vine, which I presume to be the "morning glory", grown into some brown structure leaning against the house. The third picture shows the grass in the yard, which appears untrimmed in some areas, however there is no rubbish or discarded materials noted.

The landlord testified that she has directed the tenant to remove the morning glory as she is concerned it will damage the siding of the house. The tenant testified that the morning glory plant is growing on a scaffold, which is on the side of the house, and that

it is not growing into the actual siding of the house. I presume the brown structure seen in the picture is the scaffold referenced by the tenant.

The tenant testified that after receiving the landlord's notice about the yard, he had a friend mow the yard.

The landlord objects to the tenant smoking in the rental unit due to the discolouration it causes to the walls and fixtures. As well, she does not like being subjected to the smoke when she attends at the rental property to pick up the monthly rent payment. The tenant testified that he is allowed to smoke in the rental unit per the verbal agreement with the previous landlord.

The tenant acknowledged that since he is no longer able to afford a house cleaner, the interior of the rental unit needs some cleaning inside.

The landlord stated that the tenant promised to repair the garage gutter but failed to do so. The tenant stated that upon further investigation he determined that the issue is the garage roof, which needs new shingles, not the gutter.

Analysis

Section 47 of the *Act* provides 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.

The tenant confirmed he received the landlord's One Month Notice on September 29 or 30, 2019. The tenant filed an application to dispute the notice on October 5, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice.

In this matter, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove any of the grounds for issuing the One Month Notice, as explained below.

The landlord did not submit any evidence of illegal activity that has damaged the landlord's property. There was no evidence of police attendance at the rental unit, and no evidence of any bylaw or other legal infraction.

The landlord did not submit any evidence that the tenant has caused extraordinary damage to the rental unit. Evidence of extraordinary damage could include receipts for repair costs.

The landlord did not submit any evidence that the tenant damaged the rental unit and failed to repair the damage. There was no evidence that the tenant caused the damage to the garage gutters, through his actions or neglect. Section 32(4) of the *Act* states that a tenant is not required to make repairs for reasonable wear and tear. Further to this, the maintenance of the garage gutters is the responsibility of the landlord, not the tenant.

The landlord did not submit sufficient evidence that the tenant put the landlord's property at risk. I do not find one morning glory growing against a scaffold sufficient evidence of risk. I also do not find an untrimmed yard as depicted in the picture submitted by the landlord as sufficient evidence of risk. The tenant acknowledged that the interior of the rental unit requires some cleaning, however, the landlord did not provide sufficient evidence that the state of the rental unit or property failed to meet the "reasonable health, cleanliness and sanitary standards" required under section 32(2) of the *Act*.

The landlord did not submit sufficient evidence that the tenant breached a material term of the tenancy. There is no written tenancy agreement between the parties. When the landlord purchased the rental property and assumed the tenancy, she assumed the tenancy agreement that was in place. In this case it was a verbal tenancy agreement. The tenant testified that under that verbal agreement, he was permitted to smoke in the rental unit. Section 14 of the *Act* provides that a tenancy agreement can only be amended if both the landlord and the tenant agree to the amendment. The landlord testified that when she assumed the tenancy she approached the tenant about formalizing their tenancy in a written agreement, however the tenant did not agree to that. The tenant testified that the landlord is now trying to require the rental unit to be non-smoking. However, the tenant is not obligated to accept any changes to the tenancy agreement solely at the request of the landlord. I accept the tenant's testimony that he was permitted to smoke in the rental unit under the terms of his original, and

continuing, tenancy agreement. Therefore, I do not find that tenant in breach of a material term of the tenancy agreement.

As such, I have found that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause, the tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in his application, he may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold \$100.00 from a future rent payment on one occasion.

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated September 29, 2018 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

I order the tenant to withhold \$100.00 from a future rent payment on one occasion in satisfaction of the recovery of the filing fee for this application.

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: December 06, 2018

Residential Tenancy Branch