



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 (the "One Month Notice") pursuant to section 47;
- a claim for harassment; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's claim for harassment to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the One Month Notice.

I find that the tenant's other claim for harassment is unrelated in that it does not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notice. I exercise

my discretion to dismiss the tenant's claim for harassment with leave to reapply. This matter shall proceed regarding the tenant's application for the cancellation of the One Month Notice and recovery of the filing fee for this application.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's One Month Notice pursuant to section 47?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties both testified that the tenancy started in 2000. The rental unit is a two-bedroom apartment.

The landlord testified that he personally served the One Month Notice on August 30, 2019. The tenant acknowledged service of the notice.

The One Month Notice states that the landlord is seeking to end the tenancy because the landlord has an unreasonable number of occupants. The landlord testified that up to four persons would be a reasonable number of occupants in the rental unit. The landlord testified that two persons occupied that rental unit but he was seeking an end of this tenancy because the second occupant in the rental unit did not sign a tenancy agreement with the landlord.

The tenant testified that the second occupant has resided in the rental unit with her for ten years. She testified that two occupants is not an unreasonable number of occupants. The tenant also testified that the number of occupants in her rental unit has not disturbed or adversely affected the landlord or other occupants in the building.

Analysis

A tenant may dispute a notice to end tenancy for cause pursuant to section 47(4) of the *Act*. Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

I find that the landlord has not provided sufficient evidence to establish that the tenant has an unreasonable number of occupants in the rental unit. The landlord acknowledged that up to four occupants would be reasonable and both parties agreed that the tenant only had two occupants in the rental unit. Accordingly, I grant the tenant's application to cancel the One Month Notice.

The One Month Notice is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenant has prevailed in this matter, the tenant's application for reimbursement of the filing fee is granted pursuant to section 72. The tenant may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

Conclusion

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

The tenant's application for reimbursement of the filing fee is granted pursuant to section 72. The tenant may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

The tenant's application for harassment is dismissed with 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 *Residential Tenancy Act*.

Dated: November 18, 2019

Residential Tenancy Branch