



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in September 2018. The current monthly rent is \$1,220.00 payable on the last day of the previous month. The rental unit is a suite in a four-plex building with 3 other occupants residing in the other units of the building.

The landlord issued a 1 Month Notice dated April 1, 2022 stating the reasons for the tenancy to end as:

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

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

Tenant has caused extraordinary damage to the unit/site or property/park.

The landlord submits that the stove in the rental unit was newly purchased when the tenancy began in 2019. The landlord says that they hired a third-party technician to inspect the stove at the tenant's request in March, 2022 and they found that wires in the stove had been cut. The wires are only accessible by removing the stove from its position against the kitchen wall and removing the back cover. The landlord attributes the cutting of the internal wires of the stove to the tenant and characterizes the damage as extraordinary and due to the nature of the electrical wiring, says it puts the property at significant risk.

The tenant disputes that they have damaged the rental unit. The tenant clarified that the portion of their application seeking an order of compliance pertains to cancellation of the present 1 Month Notice.

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.

In the present case the tenant confirms they were served with the 1 Month Notice on April 1, 2022 and filed their application on April 4, 2022. Therefore, I find the tenant was within the statutory timeline to file their application.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant or person permitted on the property by the tenant has caused extraordinary damage or have put the property at significant risk.

Based on the totality of the evidence before me I find the landlord has not met their evidentiary onus. I find little evidence to support the landlord's conjecture that the tenant is responsible for damage to the kitchen stove wiring. Based on the description of the inaccessible nature of the wiring I find the landlord's supposition to have little air of reality. The landlord's version of events requires the tenant to have physically moved the heavy stove from its position against the wall, opened up the back panel to access wiring and deliberately cut the wires to cause their own stove to become non-functional before closing the back panel and returning the stove to its original position. All of this must have been done by the tenant prior to their calling the landlord to inform them of a malfunctioning stove. I find the scenario posited by the landlord to be far-fetched at best and does not meet their evidentiary onus on a balance of probabilities.

I find the landlord has failed to establish on a balance that there has been any conduct on the part of the tenant that would reasonably be considered extraordinary damage to the rental unit or a significant risk to the property. Accordingly, I allow the tenant's application and cancel the 1 Month Notice of April 1, 2022. This tenancy continues until ended in accordance with the *Act*.

As the tenant was successful they may recover their filing fee from the landlord. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant is successful in their application. The 1 Month Notice of April 1, 2022 is cancelled and of no further force or effect.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: July 28, 2022

Residential Tenancy Branch