



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, MNDCT, DRI, LAT, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on May 5, 2022 seeking:

- a. to dispute a One Month Notice to End Tenancy for Cause (the “One-Month Notice”)
- b. more time to dispute the One-Month Notice
- c. compensation for monetary loss
- d. to dispute a rent increase that is above the amount allowed by law
- e. authorization to change the locks on the rental unit
- f. the Landlord’s compliance with the legislation and/or the tenancy agreement
- g. reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 29, 2022.

At the start of the hearing, the Landlord confirmed they received notice of this hearing from the Tenant. This included the Tenant’s prepared evidence. The Tenant also confirmed they received the Landlord’s prepared evidence. With this confirmation of disclosure, the hearing proceeded.

Preliminary Matter – unrelated claims

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is

seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on the One-Month Notice issued by the Landlord.

By application of Rule 6.2, I dismiss the Tenant’s other issues -- c. through f. listed above -- with leave to re-apply.

Issue(s) to be Decided

Is the Tenant allowed to more time in which to file an Application for Dispute Resolution, pursuant to s. 66 of the *Act*?

Is the Tenant entitled to a cancellation of the One-Month Notice?

Should the Tenant prove unsuccessful in this Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord and Tenant each presented in their evidence a copy of the tenancy agreement in place. The Tenant and the prior Landlord signed this agreement on September 28, 2018. Of relevance to this hearing, the final page of the agreement specifies “One pet allowed”, initialled by the Tenant in that spot.

The Landlord named as the Respondent in this hearing, purchased the rental unit property in 2021, and clarified that they became the Landlord on September 1, 2021. The tenancy agreement was a subject of the purchase as set out in that agreement. The Landlord lived in the main unit at the property; the Tenant here occupied the rental unit basement suite.

The Tenant provided a copy of the Landlord-signed One-Month Notice, signed by the Landlord on March 31, 2022. This gives the single reason for ending the tenancy as the Tenant “seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” On the second page of the document, the Landlord gave the details: “This notice is in regards to our discussion that we had on January 02, 2022.” And: “The reason for serving this notice is my son’s health condition that you are aware of.”

In the hearing, the Landlord presented the reason for ending the tenancy was the Tenant’s dog which affected their child who suffered from an incident involving a dog. This evolved into a phobia and in the hearing the Landlord noted another doctor had described this as PTSD. The Landlord had a discussion with the Tenant about this issue in January 2022, leaving the issue unresolved insofar as the Tenant stated they would make sure the Landlord’s child would not encounter their dog. After this, in regular messages on this subject, the Tenant mentioned their dog was a “therapeutic dog.”

In the hearing the Landlord described the measures they have gone through with their child in order to move forward on this phobia. This is therapy and ongoing counselling.

The Tenant noted there was only one interaction with the Landlord’s child and their dog in September 2021. They pointed to the original tenancy agreement as allowing one pet and confirmed with evidence that their dog is registered as a service dog. At one point they proposed that the Landlord could involve their dog as part of their child’s therapy; however, the Landlord “disregarded” this proposal.

On the One-Month Notice, the Landlord provided the end-of-tenancy date as May 1, 2022.

In the hearing the Landlord stated they served the One-Month Notice by attaching it to the door on March 31, 2022. In the Landlord’s evidence they provided a letter from an acquaintance dated July 25, 2022; that person stated they “went together [*i.e.*, with the Landlord] to post the notice to end tenancy on the door of the rental suite. . .”

In the hearing the Tenant clarified that they were away from the rental unit since March 22, 2022. A friend was periodically visiting the rental unit during this time, approximately every 2 weeks. Their friend did not observe the One-Month Notice attached to the door on the rental unit until May 5, 2022. The Tenant did not return to the rental unit until May 10; however, they emailed to the Landlord on May 5 to advise they received the One-Month Notice.

The email correspondence throughout the month of April concerning the Landlord's desire to end the tenancy is in the Tenant's evidence:

- on April 1, 2022 the Landlord advised that they were extending the Tenant's timeline to find other accommodation until the end of April 2022
- on April 23 the Tenant replied to say that their pet was a "certified service animal", and that they would not be moving out on April 30, noting they were away from the rental unit until May 10
- the Landlord responded on April 28 to ask for proof of the Tenant's pet's status, stating "it is not in the best interest of my child to have yourself as the tenant, considering the pet" – additionally, the Landlord stated: "I have already given you a sufficient to vacate the premises [*sic*]. Should you fail to do so by May 10, 2022 I will be changing the locks."
- on May 5 the Tenant advised their friend had discovered the One-Month Notice attached to the door on the rental unit

The Tenant's friend provided a statement that appears in the Tenant's evidence for this hearing. They noted their "multiple" visits to the rental unit "to check on the suite." They noted: "There was no notice posted during this entire period until today May 5th, my most recent visit to the suite."

In the Landlord's evidence is a text message dialogue between the parties dated April 1:

- the Landlord requested a discussion on the Tenant's plans
- the Tenant responded to advise they were "away right now"
- the Landlord requested information on the Tenant's return
- the Tenant advised "Not sure yet I'll let you know".
- to this, the Landlord advised "We expected the place to be vacant by End March . . . but . . . we would like to extend that to end of April".

Analysis

The *Act* s.47(1) states that a landlord may end a tenancy if any of the certain categories apply. One of the conditions listed are those indicated by the Landlord on the One-Month Notice: where the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

Following this, the *Act* s. 47(4) states that within 10 days of receiving it, a tenant may dispute the One-Month Notice by making an application for dispute resolution.

For the purpose of resolving this matter, it is important to weigh the Tenant's evidence regarding their friend's visits to the rental unit through April, against the Landlord's evidence that they served the One-Month Notice to the Tenant by attaching it to the door of the rental unit on March 31, 2022.

I find it more likely than not that the Landlord did not serve the One-Month Notice to the Tenant on March 31, 2022. There was immediate subsequent communication between the parties on April 1, 2022 and the Landlord did not mention this. I do concede that the Tenant did not raise the issue of the One-Month Notice in that dialogue; however, the Landlord stated they were *extending* the tenancy through to the end of April. It appears this was based on previous discussion with the Tenant regarding their possible move out from the rental unit; however, that was not finalized. I find the Landlord stated the end-of-tenancy date in terms of an extension to some implied agreement and did not finalize this as the date on the One-Month Notice. Even with this discussion, the One-Month Notice itself provided end-of-tenancy date as May 1, 2022 which, strictly speaking, contradicts what the Landlord was telling the Tenant (*i.e.*, an end-of-April vacancy date) after they allegedly issued a document stating otherwise (*i.e.*, May 1st) the day prior to this communication.

Even allowing for an error on the part of the Landlord in filling out the form – indicating vacant by May 1st, meaning a move-out date of April 30 – the Landlord still did not inform the Tenant they issued the One-Month Notice by attaching it to the door of the rental unit when they learned of the Tenant's absence right away on April 1st. I find this is disingenuous of the Landlord; moreover, I find it decreases the likelihood that the Landlord served the document on March 31, 2022. Further, the Landlord did not advise of the One-Month Notice when they learned of the Tenant's extended absence from the Tenant directly on April 23. Oddly, the Landlord did not inform the Tenant of the One-Month Notice throughout communication in April concerning an imminent end of this tenancy.

In this situation, the *Act* s. 47(4) conferred a legal right on the Tenant to challenge the One-Month Notice. This right was sidelined when the Tenant was not informed of the existence of the One-Month Notice. Again, this was despite communication focusing on an end of the tenancy.

The *Act* s. 71(b) allows an arbitrator to find a document was sufficiently served on a date the arbitrator specifies. Here, I find the Landlord in effect served the One-Month Notice on May 5, 2022. With this finding, the Tenant's plea for more time in which to make their Application is a non-issue: the Tenant's Application with the Residential Tenancy Branch was in place on that same date.

I now consider the validity of the One-Month Notice in terms of the reason the Landlord provided. On this, I find the circumstances present do *not* support the reason that the Tenant "seriously jeopardized the health or safety or lawful right of another occupant", this being the Landlord's child. I appreciate the Landlord's child suffered some traumatic event in the past; however, that is not directly attributable to the Tenant here, and I cannot find that the presence of the Tenant's dog jeopardizes the health or safety of the Landlord's child.

For one, there was no record of the Tenant's dog causing a serious issue for the Landlord in the past. There was on record one interaction in September 2021, and it was not presented that this left an indelible impression on the Landlord's child. Second, the medical records submitted by the Landlord are not definitive in stating there is to be no presence of dogs anywhere near the child. I acknowledge the child's trauma; however, this cannot be used as justification for ending the tenancy inappropriately, both in terms of service of the One-Month Notice and the sole reason thereof, as the Landlord is attempting to do here.

In sum, the Landlord did not provide sufficient details of what this Tenant did that jeopardized the health or safety of the Landlord's child, and I cancel the One-Month Notice for this reason. The details on page 2 of the document refer to a discussion on January 2, 2022 – which can be interpreted differently by the two parties involved based on their recollection – and the son's health condition which was not worsened by the Tenant here.

I find the One-Month Notice is not valid. The Landlord has not met the burden of proof; therefore, I so order the One-Month Notice is cancelled. As the Tenant was successful in this Application, I find they are entitled to recover the \$100 filing fee they paid for this

Application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 7, 2022

Residential Tenancy Branch