



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINCERE REAL ESTATE SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC RP FFT

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated September 16, 2022 (1 Month Notice), for regular repairs to the unit, site or property, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and an agent for the landlord, SW (agent) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any substantive service issues. As a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

In addition, the parties confirmed their email addresses at the outset of the hearing and were advised that the decision would be emailed to both parties.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence for my consideration. The fixed-term tenancy began on August 1, 2017 and converted to a month-to-month tenancy as of July 31, 2018.

Filed in evidence was a copy of the 1 Month Notice dated September 16, 2022. The tenant testified that they received the 1 Month Notice on September 23, 2022 via email. The tenant applied to dispute the 1 Month Notice on September 23, 2022, when they amended an application to dispute resolution that was for repairs dated September 7, 2022. The effective vacancy date listed on the 1 Month Notice is October 31, 2022.

On the 1 Month Notice listed one cause as follows:

- ☒ 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(s) states the following:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

Breach the contract for pets

According to the Tenancy Agreement signed in Addendum:

There are no pets permitted within this rental unit. No EXCEPTIONS.

The addendum to the tenancy agreement includes the following pet-related term:

- **There are no pets permitted within this rental unit. No EXCEPTIONS.**

The landlord submitted a warning letter dated August 16, 2022 (Warning Letter), which reads as follows, in part:

August 16, 2022

Re: Pets in the unit

This Notice is being sent to you to let you know that you are in breach of your lease agreement.

Your rental home has an unlawful pet that has been found there. Pets are expressly forbidden under your Lease Agreement's paragraph. The pet has to leave the property right now.

On August 30, 2022 an inspection of the property will be done to make sure the unauthorized pet has left.

Your refusal to cooperate or abide by this demand could lead to your eviction from the property and additional costs like lawyer and court costs.

We anticipate and appreciate your early assistance in getting the pet out of the way.

Please get in touch with me if you have any queries.

The agent testified that the tenant replied with an email saying “no”, which the tenant clarified was notice to the landlord that they would not be vacating the rental unit.

The tenant confirmed that the landlord did not conduct an inspection of the rental unit on August 30, 2022 and instead testified that the inspection was conducted on October 7, 2022, which is weeks after the 1 Month Notice was issued.

The agent was asked why the landlord failed to do an inspection as indicated on the Warning Letter. The agent stated that the tenant refused access, which the tenant denied and stated that they have never met the agent and that the agent has not requested access to the rental unit and that a notice of entry was not posted to the rental unit. The agent confirmed that a notice of entry was not posted to the rental unit.

The agent was asked how they knew about a pet, and the agent admitted that on either August 15th or August 16th a property manager, IZ discovered a pet. The agent

presented no witnesses or other documentation confirming there was a pet in the rental unit after the Warning Letter and before the 1 Month Notice was issued.

The parties confirmed that January 2023 rent has been paid.

Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of October 31, 2022. The tenant disputed the 1 Month Notice on September 23, 2022, which is within the 10-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice as the tenant testified that they received the 1 Month Notice via email on September 23, 2022.

Once a 1 Month Notice is disputed, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. I find the landlord has failed to meet the burden of proof as the agent has never met the tenant and has no first-hand knowledge that the tenant has a pet in the rental unit. An allegation without supporting evidence to support that allegation, such as witness testimony or a statement from a witness is not sufficient evidence to prove a 1 Month Notice, especially when a tenant disputes the reason alleged on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted documentary evidence such as an inspection report or photo evidence dated after the warning letter and before the 1 Month Notice was issued. I would have also expect some evidence, such as a letter from IZ confirming that on a specific date a pet was witnessed inside the rental unit, which I do not have before me. I also find the details regarding IZ to be vague, which was either August 15th or 16th, which I amount to guessing on the part of the agent.

Based on the above, I find the landlord has provided insufficient evidence to prove that the 1 Month Notice dated August 16, 2022 is valid. Therefore, I **cancel** the 1 Month Notice dated August 16, 2022 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant the recovery of the \$100 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100** from a

future month of rent in full satisfaction of the recovery of the cost of the filing fee. This order is made pursuant to sections 62(3) and 72 of the Act.

Conclusion

The 1 Month Notice issued by the landlord dated August 16, 2022 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The tenant has been authorized a one-time rent reduction in the amount of \$100 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

The decision will be emailed to both parties as confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 26, 2023

Residential Tenancy Branch