



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT, CNR, MNDCT, RP, FFT

Introduction

This hearing was convened by way of conference call in response to Applications for Dispute Resolution filed by the Tenant October 05, 2022, and November 12, 2022 (the “Applications”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated October 02, 2022 (the “One Month Notice”)
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10 Day Notice”)
- For compensation
- For a repair order
- To recover the filing fees for the Applications

The Tenant appeared at the hearing. The Landlord appeared at the hearing with M.J. as their representative. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the One Month Notice and 10 Day Notice (the “Notices”) as well as the request to recover the filing fees but would dismiss the remaining requests because they are not sufficiently related to the disputes of the Notices. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Should the 10 Day Notice be cancelled?
3. Is the Tenant entitled to recover the filing fees for the Applications?

Background and Evidence

The parties agreed there is no written tenancy agreement between them. The Tenant testified that the tenancy started October 02, 2021, and M.J. testified it started October 01, 2021. The Tenant testified that the Landlord told the Tenant they could stay in the rental unit as long as they wanted. M.J. testified that this is a month-to-month tenancy. The parties agreed rent is \$1,200.00 per month due on the first day of each month. The parties agreed the Tenant paid a \$600.00 security deposit and no pet damage deposit.

One Month Notice

The One Month Notice was submitted. The grounds for the One Month Notice are:

1. Tenant has allowed an unreasonable number of occupants in the unit/property.
2. Tenant has assigned or sublet the rental unit/property without Landlord's written consent.

The parties agreed the One Month Notice was served and received by the Tenant October 02, 2022.

M.J. acknowledged the Tenant has always remained living in the rental unit and has never moved out of the rental unit. M.J. testified that the issue is the Tenant allowing others to live with them in the rental unit.

M.J. testified as follows. The Landlord and Tenant had a verbal agreement from the start of the tenancy that only the Tenant and their two parents would live in the rental unit. The rental unit is a two-bedroom unit. The Tenant has allowed people who are not known to the Landlord to live in the rental unit. There have been up to three or four people living in the rental unit at one time which is supported by the Landlord's documentary evidence including photos of a person and mail coming to the rental unit for people other than the Tenant. The Landlord has also talked to these other people. The number of people living in the rental unit is unreasonable because the parties had a verbal agreement that only the Tenant and their parents would live in the rental unit. Further, the Landlord does not know who is living in the rental unit which poses a safety risk to the Landlord's family. As well, the Landlord has not allowed the Tenant to have others living in the rental unit.

The Tenant testified as follows. At the start of the tenancy, the Landlord was concerned about how the Tenant would pay rent if they were the only person living in the rental unit and the Tenant told the Landlord they would have others living with them. The Landlord and Tenant came to an agreement that up to three people could live in the rental unit. The Tenant did not tell the Landlord their parents would live in the rental unit and only stated that their parents might come and live in the rental unit. The rental unit is two bedrooms. There has only ever been up to three people living in the rental unit at a time which is reasonable because the Landlord agreed to this.

Both parties submitted evidence which I have reviewed and will refer to below as necessary.

10 Day Notice

Neither party provided a copy of the 10 Day Notice. M.J. testified that the 10 Day Notice was dated November 07, 2022.

Analysis

One Month Notice

The One Month Notice was issued pursuant to section 47 of the *Act*. The Tenant had 10 days from receipt of the One Month Notice on October 02, 2022, to dispute the One Month Notice. The Tenant disputed the One Month Notice October 05, 2022, in time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I do not accept that the parties agreed only the Tenant and their two parents would live in the rental unit because the parties disagreed about this, the Landlord has the onus to prove this as part of proving the grounds for the Notice and the Landlord has not submitted compelling evidence to support their testimony about this agreement. If this was the agreement, I would expect there to be a written tenancy agreement setting this out, yet there is no written tenancy agreement between the parties.

Given the above, the issue here is whether three or four people have been living in the rental unit and whether the number is unreasonable.

The Landlord has not submitted compelling evidence to prove that more than three people have lived in the rental unit at any one time. The Landlord has provided a photo of an unknown person. I do not know who this person is, what their name is or whether they live in the rental unit. The Landlord provided a photo of two pieces of mail addressed to someone with the initials N.S. At best, the mail may suggest that there is one other person living in the rental unit with the Tenant; however, it does not prove that there are more than three people living in the rental unit. In the absence of further evidence, I am not satisfied the Tenant has ever had more than three people living in the rental unit.

I do not find three people living in the rental unit to be an unreasonable number of occupants because the Landlord stated that they agreed to three people living in the

rental unit, the Tenant and their two parents. Further, on an objective view, I do not find three people living in a two-bedroom basement suite to be unreasonable.

Given the above, the Landlord has failed to prove they had grounds to issue the One Month Notice based on there being an unreasonable number of occupants living in the rental unit.

Pursuant to RTB Policy Guideline 19, the terms “assignment” and “sublet” both refer to situations where a tenant moves out of the rental unit and assigns their tenancy agreement to another person or sublets the rental unit to another person. The Tenant has not assigned or sublet the rental unit because the Tenant has remained living in the rental unit. The Tenant has simply allowed roommates or occupants to move into the rental unit with them, which is not the same as assigning or subletting. Given the Tenant has not assigned their tenancy agreement or sublet the rental unit, the Landlord did not have grounds to issue the One Month Notice on this basis.

The Landlord has failed to prove the grounds for the One Month Notice and it is cancelled.

10 Day Notice

Neither party provided a copy of the 10 Day Notice. As stated, pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the validity of the 10 Day Notice. Given the 10 Day Notice is not before me, I cannot confirm that it complies with section 52 of the *Act* as required by section 46(2) of the *Act*. Given this, the 10 Day Notice is cancelled.

Filing fees

I award the Tenant \$100.00 as reimbursement for one filing fee pursuant to section 72(1) of the *Act* because the Tenant has been successful in the Applications. The Tenant can deduct \$100.00 from their next rent payment pursuant to section 72(2) of the *Act*.

I decline to award the Tenant \$200.00 for two filing fees because there was no need for the Tenant to file two separate Applications for these matters. The Tenant could have simply amended their first application to include the issues raised in their second application which would not have resulted in a second filing fee.

Conclusion

The One Month Notice and 10 Day Notice are cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next 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 *Act*.

Dated: February 21, 2023

Residential Tenancy Branch