Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, RR, PSF, FFT
CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*). The tenant filed her first application for dispute resolution on November 16, 2022. The first application seeks:

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant filed her second application for dispute resolution on November 30, 2022. The second application seeks:

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was represented by counsel and the tenant's interpreter also attended. The interpreter affirmed to translate to the best of her ability from the English language to the Vietnamese language and from the Vietnamese language to the English language.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant testified that she was not recording the hearing. The landlord testified that she was recording the hearing. I instructed the landlord to stop recording. The landlord testified that she stopped recording the hearing.

Per section 95(3) of the Act, the landlord may be fined up to $5,000.00 if she recorded this hearing after testifying that she stopped recording the hearing.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Counsel submitted that both applications for dispute resolution and supporting evidence were served on the landlord via registered mail. Receipts for same were entered into evidence. The landlord confirmed receipt of the above documents. I find that the landlord was served with the tenant's applications for dispute resolution and evidence in accordance with section 88 and 89 of the *Act.*

Both parties agree that the landlord's counsel served the tenant's counsel with the landlord's evidence in advance of this hearing. I find that the tenant was served in accordance with section 88 of the *Act.*

Preliminary Issue- 10 Day Notice

The landlord testified that she is not pursuing an Order of Possession based on the 10 Day Notice and that the 10 Day Notice is cancelled. Pursuant to the landlord's testimony, I grant the tenant's claim to cancel the 10 Day Notice and find that as it is cancelled, it is of no force or effect. As both parties agreed that the 10 Day Notice was cancelled, I did not hear the merits of the 10 Day Notice or the tenant's claim for more time to cancel the 10 Day Notice as the claim is moot.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an

Application for Dispute Resolution 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 other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss, with leave to reapply, the tenant's claims for:

- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to to recover the filing fees for these applications for dispute resolution, from the landlord, pursuant to section 72 of the *Act*?

Evidence/Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 7, 2018 and is currently ongoing. Monthly rent in the amount of $1,224.00 is payable on the first day of each month. A security deposit of $600.00 and a pet damage deposit of $300.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenant was personally served with the One Month Notice on November 30, 2022. The tenant testified that she was personally served with the One Month Notice on November 26, 2022. I find that in either actuality, the tenant was served with the One Month Notice in accordance with section 88 of the *Act* and within the 10 day filing time limit found in section 47(4) of the *Act.*

The One Month Notice was entered into evidence, is signed by the landlord, is dated April 1, 2022, gives the address of the rental unit, states that the effect date of the notice is January 1, 2023, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- Rental unit/site must be vacated to comply with a government order.

The Details of Cause section of the Notice states:

> By law officer inspected the suite on Nov. 19, 2022, and had notify the landlord the suite is illegal therefore the landlord need to vacate the unit the tenant also engage in illegal activity which affect others.

The landlord testified that a bylaw officer inspected the subject rental property on November 19, 2022 and verbally told her that if they receive anymore complaints from neighbours they will return and not let the landlord rent out the subject rental property to anyone. The landlord testified that she was told the subject rental property was an illegal suite and that she has to give notice to the tenant and to complete some renovations.

The landlord did not enter into evidence any documentary evidence from the subject rental City, bylaw officers or any other level of government.

Counsel submitted that the landlord has not provided any evidence of a government order. Counsel submitted that there may have been some discussion with a bylaw officer, but the verbal conversation doesn’t count as a government order.

I find that the landlord had some conversation with a bylaw officer; however, I am not satisfied as to exactly what said in that conversation as no documentary evidence from the bylaw officer was entered into evidence nor was the bylaw officer called as a witness. I find that the landlord has not proved that any level of government ordered the

tenancy to end or for the subject rental properyt to be vacated as no documents confirming same were entered into evidence. I find that the verbal conversation, is not, on its own, a government order. I find that the landlord has not proved this ground for eviction.

The landlord testified that some of her neighbours came to her and informed her that the tenant is having a lot of visitors on the weekend and that they are not happy about this. I asked the landlord what illegal activity she is alleging the tenant engaged in, the landlord testified that the neighbours have not told her specifically but just that they saw things they are not happy about. The landlord testified that the by-law officer came because of the things the neighbours saw.

Counsel submitted that the landlord has not provided any evidence of illegal activity and that the One Month Notice should be cancelled.

I find that having visitors on weekends is not an illegal activity. To be successful in an eviction under section 47(1)(e))(ii), the landlord is required to prove, on a balance of probabilities, that an illegal activity has occurred. The landlord did not specify what illegal activity she believes the tenant has engaged in. I find that speculation that an unknown illegal activity has occurred does not meet the required burden of proof the landlord is required to meet. I find that the landlord has not proved that any illegal activity has occurred.

Pursuant to my above findings, I cancel the One Month Notice because the landlord has not proved any of the grounds to end the tenancy listed in the One Month Notice. This tenancy will continue in accordance with the *Act.*

I find that the tenant is only entitled to recover one of the filing fees because the tenant could have amended the first application for dispute resolution to include the claim to cancel the One Month Notice and thus avoided the second filing fee. As set out in Residential Tenancy Policy Guideline #16, to be successful in a monetary claim, the party claiming the loss must mitigate their damages. I find that in filing two separate application for dispute resolution rather than amending the first application for dispute resolution, the tenant failed to mitigate her damages and so only one filing fee is recoverable.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled on one occasion to deduct $100.00 from rent.

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: March 30, 2023

Residential Tenancy Branch