



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), and to recover the filing fee.

The tenant, the landlord’s counsel and agent, and counsel for the tenant attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Counsel for the landlord confirmed that the tenant’s evidence was received and reviewed prior to the hearing. Counsel for the landlord also confirmed that the landlord did not submit any evidence in response to the tenant’s application to dispute the 1 Month Notice.

Preliminary and Procedural Matter

During the hearing, counsel for the landlord requested an order compelling the ex-boyfriend of the tenant, FP, to testify. The landlord did not submit a request prior to the hearing to request a subpoena for a witness. **I find** the landlord could have obtained a written statement or arranged to have FP at the hearing as a witness, and did not present any evidence of their attempts to have FP present. As a result, I declined the request of counsel to issue an order compelling the attendance of FP.

Issue to be Decided

- Should the 1 Month Notice cancelled?

Background and Evidence

A fixed term tenancy began on February 1, 2004 and reverted to a month to month tenancy as of January 31, 2005. Monthly rent in the amount of \$1,300.00 was due on the first day of each month and was increased to \$1,350.00 as of May 1, 2013. A security deposit of \$650.00 was paid by the tenants at the start of the tenancy.

A 1 Month Notice dated April 23, 2013 was received by the tenant on April 25, 2013 and has an effective vacancy date of May 30, 2013. In the 1 Month Notice, the landlord has alleged three causes. The first cause is that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. The second cause is that the tenant has not done required repairs of damage to the unit/site. The third cause is that the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord's agent and counsel did not have any evidence to support the first two causes other than to state that on April 15, 2013, the tenant's new boyfriend alleged had an altercation with the tenant's former boyfriend, FP.

The landlord's agent and counsel claims that by tenant having a new boyfriend living with her in the rental unit, the tenant has assigned or sublet the rental unit without permission of the landlord. The tenant stated that she continues to reside in the rental unit and has not assigned her boyfriend or sublet her rental unit to her new boyfriend. The landlord provided no evidence to support that the applicant tenant has vacated the rental unit resulting in the assignment or subletting of the rental unit to the tenants' new boyfriend.

The tenant submitted photos of the rental unit, which counsel for the landlord confirms he received and reviewed prior to the hearing.

Analysis

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

The 1 Month Notice dated April 23, 2013 has an effective vacancy date of May 30, 2013 which automatically corrects under the *Act* to May 31, 2013. The tenant disputed the 1 Month Notice on April 30, 2013 which is within the ten day timeline provided for under the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice. An allegation without supporting evidence to support that allegation, such as witness testimony or witness statement is not sufficient evidence to prove a 1 Month Notice.

At the very least, I would have expected the landlord to have submitted photos of alleged damage to the rental unit caused by the tenant. In the matter before me, the tenant submitted photos of the rental unit which appear to show a rental unit that has not been damaged. Furthermore, as the landlord failed to provide any witnesses or witness testimony regarding an alleged "altercation" between the tenant's boyfriend and the tenant's former boyfriend, and has failed to provide any specific details of the alleged altercation, **I find** the landlord has failed to prove the first two causes alleged in the 1 Month Notice.

Regarding the final cause, the landlord alleges that the tenant has assigned or sublet the rental unit to her new boyfriend without the landlord's consent. For that to have occurred, the tenant could not be residing in the rental unit, which the tenant disputes. The tenant stated that she continues to reside in the rental unit. As such, the tenant's new boyfriend would be considered a roommate.

Based on the above, **I find** that the landlord has not met the burden of proof as the landlord provided insufficient evidence to prove any of the three grounds listed on the 1 Month Notice. Therefore, **I cancel** the 1 Month Notice as the 1 Month Notice is not valid.

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

As the tenant's application had merit, **I grant** the tenant the recovery of the filing fee in the amount of **\$50.00**. **I authorize** the tenant to deduct that amount from a future month's rent on a one-time basis in the amount of **\$50.00** in full satisfaction of the recovery of their filing fee.

Conclusion

The 1 Month Notice issued by the landlord is cancelled.

I authorize the tenant to deduct \$50.00 from a future month's rent in full satisfaction of the recovery of their filing fee as their application had merit.

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

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: May 27, 2013

Residential Tenancy Branch

