



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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”).

The tenant and the male landlord, MD, 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 make submissions to me.

The landlord confirmed that he did not submit any evidence in response to the tenant’s application for dispute resolution. The tenant confirmed that she did not serve the landlords with her evidence. As a result, the tenant’s evidence was excluded from the hearing as the tenant failed to serve the landlords in accordance with the Rules of Procedure. As an alternative, both parties were advised that I would consider their testimony provided during the hearing.

Issue to be Decided

- Should the 1 Month Notice cancelled?

Background and Evidence

A fixed term tenancy began on or about July 1, 2006 and reverted to a month to month tenancy as of July 1, 2007. Monthly rent in the amount of \$1,200.00 is due on the first day of each month and has not increased during the tenancy. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy.

The parties agree that a 1 Month Notice dated July 9, 2013 was received by the tenant on July 29, 2013 and had an effective vacancy date of August 31, 2013. The tenant filed to dispute the 1 Month Notice on August 6, 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 engaged in illegal activity that has, or is likely to damage the landlord's property. The third cause is that the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord stated that he did not submit any documentary evidence to support the three causes being alleged in the 1 Month Notice. The landlord testified that all three causes relate to the same incident, which the landlord described was the tenant causing bathroom water damage. The landlord testified that when he inspected the rental unit after the tenant advised him of mould in the bathroom, the landlord witnessed water coming from the faucet. The landlord then corrected himself and stated that water was actually coming from the taps; both the hot and cold taps of the bathtub in the bathroom of the rental unit.

The landlord testified that he hired a contractor who wrote the landlord a quote which indicated that the taps were the cause of the water leak in the bathroom. The landlord stated that the tenant or someone permitted by the tenant changed the taps of the bathtub without the landlord's permission, which caused a water leak in the rental unit and damage to the landlord's property. The landlord acknowledged that he did not submit the quote allegedly written by the contractor he hired. Furthermore, the landlord stated that he did not have any witnesses to present during the hearing.

The tenant disputed the landlord's testimony. The tenant denied that she or anyone on permitted by her, changed the bathtub taps during the tenancy.

Analysis

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

The 1 Month Notice dated July 29, 2013 has an effective vacancy date of August 31, 2013. The tenant disputed the 1 Month Notice on August 6, 2013 which is within the ten day timeline provided for under section 47 of 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 a statement from a witness is not sufficient evidence to prove a 1 Month Notice, especially when a tenant disputes that she changed the taps to the bathtub, which the landlord alleges is the reason cited for all three causes listed on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted documentary evidence that supports the three causes listed in the 1 Month Notice, or have arranged for a witness to provide testimony that would support the allegations made by the landlord during the hearing.

Where 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. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, **I find** the landlord has provided insufficient evidence to prove that the 1 Month Notice dated July 29, 2013 is valid. Therefore, **I cancel** the 1 Month Notice dated July 29, 2013 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*.

Conclusion

The 1 Month Notice issued by the landlord dated July 29, 2013 is cancelled.

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: September 11, 2013

Residential Tenancy Branch

