



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Providence Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that the 1 Month Notice was posted on the tenant's door on August 27, 2013. The tenant's witness testified that she sent the landlord a copy of the tenant's dispute resolution hearing package by registered mail on September 10, 2013. The tenant entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. I am satisfied that the above documents were served to one another by the parties in accordance with the *Act*.

The landlord made an oral request for the issuance of an Order of Possession based on the landlord's 1 Month Notice.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy for a rental unit in a 78-unit low rise building commenced on October 9, 2003. Current monthly rent is set at \$782.65, payable in advance on the first of each month. The landlord continues to hold the tenant's \$325.00 security deposit paid when this tenancy began.

The landlord did not enter any written evidence for this hearing. The tenant entered into written evidence a copy of the landlord's 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by September 30, 2013, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

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 or the landlord;*

The landlord was unaware of any illegal activity undertaken by the tenant on the rental premises and made no attempt to implement the 1 Month Notice on the basis of the last of the three reasons outlined above.

The landlord testified that she has received complaints from a number of tenants in the building, including a single mother and another woman in the building. She said that these women were concerned that the tenant is visible in the rental building in an excessive and unacceptable level of undress. The landlord also described complaints from others who live and work in the building who have maintained that the tenant is in “very inappropriate levels of undress”, especially in the summer months. She said that she was worried that the landlord will lose tenants if the tenant is allowed to remain in this tenancy as he makes others, particularly women who reside in the building, uncomfortable due to his failure to wear sufficient clothing. The landlord said that the maintenance person who has viewed the tenant in an unacceptable state of dress is out of the country and had not submitted any written complaint or statement.

The tenant’s advocate questioned whether the landlord had issued any type of warning letter to the tenant about the concerns raised by other tenants and staff. The landlord testified that no such warning letter was issued as the landlord believed that the concerns were sufficient on their own to issue the 1 Month Notice.

The tenant testified that he has never dressed inappropriately in public areas of the building nor in areas where he could be observed by others. He said that the accusations about him were false.

Analysis

I find that, when a tenant’s conduct becomes bothersome to other occupants, the landlord has an obligation to issue a written warning to make sure that the tenant understands what complaints and allegations have been lodged and the precise nature of the conduct that is expected. The tenant also should be notified that unacceptable

conduct may risk termination of the tenancy if it continues. Ending a tenancy for cause is a drastic measure that is seen as a last resort. A fundamental principle of natural justice requires that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour. However, as noted at the hearing, certain types of behaviour may justify the issuance of a 1 Month Notice without issuing a letter of warning.

In this case, I do not find that the behaviours attributed to the tenant are such that the need to issue a warning letter would be waived. In fact, the only direct evidence I received from either party was the tenant's straightforward denial that he has been involved in any type of activities that would lead to complaints from other tenants about his state of undress. The landlord called no witnesses and produced no letters of complaint, even anonymous ones, from either tenants or staff to support her assertions regarding the tenant's behaviours. While I have considered the contents of one letter from another tenant in the building read into the record by the landlord, I find that this meagre evidence is not nearly enough to obtain an end to this tenancy for cause. I find that the landlord did not sufficiently prove that the tenant's conduct had reached the threshold where termination of this tenancy was necessary.

Given the above, I find it necessary to cancel the 1 Month Notice. However, the tenant is cautioned that this decision will serve as a warning regarding the concerns raised about the tenant's level of dress in portions of this building where the tenant may be observed by others. I caution the tenant that, should the landlord receive ongoing complaints that the tenant is not wearing sufficient clothing, this could function as a valid reason for the landlord to issue another Notice to terminate tenancy for cause under section 47 of the *Act*.

Conclusion

I allow the tenant's application and order that the 1-Month Notice of August 27, 2013 be cancelled. As the landlord's 1 Month Notice is of no force nor effect, this tenancy continues. The tenant is hereby cautioned that continued complaints that the tenant is not wearing an appropriate level of clothing could place the future of this tenancy at risk. 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: October 16, 2013

Residential Tenancy Branch

