



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC OLC RP PSF

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”), for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to make repairs to the unit, site or property, and to provide services or facilities required by law.

The tenant, the landlord and an on-site caretaker for the landlord 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 tenant’s DVD evidence (the “digital evidence”) was excluded from the hearing as the tenant failed to provide a summary of what the digital evidence showed and did not confirm that the other party were able to view the digital evidence at least five days prior to the hearing. With respect to the remainder of the evidence, both parties confirmed that they received evidence from the other party and had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were sufficiently served with the evidence, other than the digital evidence, in accordance with the *Act*.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”). I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request to set aside the 1 Month

Notice at this proceeding. The balance of the tenant's application is dismissed, **with leave to re-apply**.

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

The parties agree that a verbal tenancy agreement began on July 19, 2013. Monthly rent in the amount of \$400.00 is due on the first day of each month. A security deposit of \$200.00 was paid by the tenant at the start of the tenancy.

The tenant confirmed receiving a 1 Month Notice dated September 1, 2013 on September 1, 2013, which listed an effective vacancy date of October 1, 2013. In the 1 Month Notice, the landlord has alleged two causes. The first cause listed is that the tenant has been repeatedly late paying the rent. The second cause listed is that the tenant has allowed an unreasonable amount of tenants in the rental unit. The tenant disputed the 1 Month Notice on September 6, 2013.

Regarding the first cause listed, during the hearing the landlord acknowledged that the tenant has not been late paying his rent three times during the tenancy which began on July 19, 2013. The landlord alleged that the tenant was late paying rent on September 1, 2013 and October 1, 2013. The landlord acknowledged the tenant's evidence which shows a rent receipt dated August 1, 2013.

Regarding the second cause listed, the landlord stated that the tenant has a girlfriend residing with him and that the posted rules in the rental unit indicate that additional occupants are not permitted by the landlord. The tenant stated that the "posted rules" were not provided to him prior to him moving into the rental unit, which the landlord did not dispute.

Analysis

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

The 1 Month Notice dated September 1, 2013 has a stated effective vacancy date of October 1, 2013 which automatically corrects under the *Act* to October 31, 2013. The

tenant disputed the 1 Month Notice on September 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 acknowledged during the hearing that the tenant has not been late paying his rent three times during the tenancy. Residential Tenancy Branch Policy Guideline #38 – Repeated Late Payment of Rent, states that **three late payments** of rent are the minimum number sufficient to justify a notice under this provision. As a result, **I dismiss** this portion of the landlord's 1 Month Notice due to insufficient evidence.

Regarding the second cause listed on the 1 Month Notice, the landlord stated that the tenant has a girlfriend residing with him and that the posted rules in the rental unit building indicate that additional occupants are not permitted by the landlord. The tenant stated that the "posted rules" were not provided to him prior to him moving into the rental unit, which the landlord did not dispute. The parties agree a written tenancy agreement does not exist and that the tenancy is based on a verbal agreement only. Given the above, **I find** that I am not able to enforce a verbal agreement where there is a dispute regarding a specific term. In the matter before me, the landlord alleges that there were rules posted that do not permit a tenant from having an additional occupant and the tenant stated that he was not made aware of such "rules" prior to moving into the rental unit. Given the above, **I find** that the tenant having a girlfriend in the rental unit is reasonable and that the landlord has provided insufficient evidence that the tenant has violated an agreed upon term of the tenancy.

I caution the landlord to comply with section 13 of the *Act* in the future by ensuring that a tenancy agreement is in writing. Written tenancy agreements protect both the landlord and the tenant by indicating in writing to both parties what the terms of the tenancy agreement are and ensures that both parties have been made aware of those terms prior to signing the tenancy agreement and agreeing to the written terms.

Based on the above, **I find** that the landlord has not met the burden of proof as the landlord provided insufficient evidence to prove either of the two grounds listed on the 1 Month Notice. Therefore, **I cancel** the 1 Month Notice dated September 1, 2013 as the 1 Month Notice is not valid.

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

Conclusion

The 1 Month Notice issued by the landlord dated September 1, 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: October 16, 2013

Residential Tenancy Branch

