



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQANTTANAM HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The tenant, three witnesses for the tenant, and an agent for the landlord (the "agent") attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The agent for the landlord did not dispute that the landlord was personally served with the tenant's evidence. The tenant presented a witness, JM, who testified that he witnessed the tenant served TL, an agent for the landlord, on or about October 17, 2013 with evidence related to the dispute resolution hearing. As a result, I accept that the landlord was sufficiently served in accordance with the *Act*. The agent for the landlord, TW, testified that the landlord did not serve evidence in response to the tenant's application to cancel the 1 Month Notice.

Preliminary and Procedural Matter

During the hearing, the parties agreed to amend the tenant's application to replace the name of the respondent landlord agent, TL, who no longer works for the named Housing Society, with the name of the Housing Society. As a result, the respondent landlord name has been corrected to reflect the correct landlord name which replaces the previously named agent for the landlord.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on January 15, 2013. The parties agree that monthly subsidized rent of \$750.00 is due on the first day of each month. The parties agreed that the tenant paid a security deposit of \$375.00 at the start of the tenancy.

On October 1, 2013, the tenant confirmed receiving a 1 Month Notice with an effective vacancy date of November 30, 2013. The tenant disputed the Notice on October 10, 2013. The landlord listed the following reason on the Notice:

1. Tenant or person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Regarding reason #1 listed above, the agent testified that according to documents before him but not submitted in evidence, the tenant verbally harassed a painter and a floor layer. The agent was unable to provide the date of the alleged incident. The tenant denied agent's statement that a painter or floor layer was harassed. The agent did not submit any documentary evidence to support his statement and did not present any witnesses to support his testimony.

The tenant submitted in evidence a copy of the tenancy agreement, addendum to the tenancy agreement, condition inspection report and correspondence.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice within the required timelines under the *Act*, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

In the matter before me, I find that the tenant did apply to dispute the 1 Month Notice within the required timeline set out under section 47 of the *Act*. As a result, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. 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.

The tenant disputed the agent's testimony that a painter or floor layer was harassed as alleged by the landlord. The agent was unable to provide the specific date that this alleged incident had occurred. The agent did not call any witnesses in support of the cause listed in the 1 Month Notice and did not submit documentary evidence in support of the cause listed in the 1 Month Notice. As a result, **I find** the landlord has failed to meet the burden of proof to support the cause listed in the 1 Month Notice dated October 1, 2013. As the landlord has failed to prove that the 1 Month Notice is valid, **I cancel** the 1 Month Notice dated October 1, 2013. **I find** that the 1 Month Notice is of **no force or effect**.

I ORDER that the tenancy continues until ended in accordance with the *Act*.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated October 1, 2013 has been cancelled and is of no force or effect.

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: November 22, 2013

Residential Tenancy Branch

