



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP
and [tenant name suppressed to protect privacy]

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, an advocate for the tenant, and three agents 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 parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were served in accordance with the *Act*.

I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Should the 1 Month Notice cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on September 1, 2012. Monthly rent in the amount of \$1,000.00 is due on the first day of each month. A security deposit of \$500.00 was paid by the tenant at the start of the tenancy according to the tenant. The agents for the landlord were unsure of the amount of the security deposit during the hearing.

The parties agree that a 1 Month Notice dated October 16, 2013 was received by the tenant on October 18, 2013 and had an effective vacancy date of November 20, 2013. The tenant filed an application to dispute the 1 Month Notice on October 24, 2013.

In the 1 Month Notice, the landlord has alleged three causes. The first cause listed alleges that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. The second cause listed alleges that the tenant or a person permitted on the property by the tenant seriously jeopardized the health or safety of lawful right of another occupant or the landlord. The third cause listed alleges that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

Regarding the first cause, agent JB testified that he did not submit any documentary evidence or have any witnesses to present in support of the first cause.

Regarding the second and third causes, the agents referred to the landlord's photos submitted in evidence which they stated were taken on September 30, 2013 at 9:00 a.m. and that they allege support that the condition of the rental unit was impacting the health and safety of others. The advocate for the tenant referred to the tenant's evidence which were photos submitted taken on the following dates:

- October 29, 2013
- October 31, 2013
- November 12, 2013
- November 14, 2013, and
- November 21, 2013

The tenant's advocate stated that the tenant has assistance to clean his rental unit on Mondays and Wednesdays each week, and additional assistance every Thursday from the tenant's advocate to purchase supplies and assist with the tenant's laundry. The tenant's advocate indicated that the photos submitted by the tenant support that the rental unit was cleaned since being issued a 1 Month Notice.

Landlord agent JB testified that he has attended the rental unit since the photos of the tenant were taken and that the rental unit is not clean again, however, confirmed that he did not submit any updated photos to support his testimony. Agent DG testified that a report submitted in evidence dated November 22, 2013 supports that there is a roach and mice infestation in the rental unit. Agent DG, however, acknowledged that within a week or so of the tenant moving into the rental unit, the tenant complained of mice in

the rental unit. The tenant's position was that pests have been in the rental unit since the start of the tenancy and were not caused by the actions of the tenant as a result.

Analysis

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

The 1 Month Notice dated October 16, 2013 has an effective vacancy date of November 20, 2013, which automatically corrects under the *Act* to November 30, 2013 as monthly rent is due on the first day of each month. The tenant disputed the 1 Month Notice on October 24, 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.

Regarding the first cause, the landlord failed to submit any documentary evidence or present witnesses to provide evidence to support this alleged cause. As a result, **I find** the landlord has provided insufficient evidence to support the first cause listed on the 1 Month Notice.

Regarding the second and third causes, the landlord referred to photos taken before the tenant's photos. I find the tenant's photos show a reasonably clean rental unit and that the tenant's photos were taken after the photos provided by the landlord. I find the report dated November 22, 2013 holds no weight as agent DG confirmed during the hearing that the tenant complained of mice within a week or so of moving into the rental unit. 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.

Based on the above, **I find** that the landlord has provided insufficient evidence to support the second and third causes listed on the 1 Month Notice. At the very least, if the landlord was intending to rely on photos allegedly taken after the tenant's photos, I would have expected the landlord to have submitted those photos in evidence, which the landlord failed to do. Furthermore, I find the landlord has provide insufficient evidence to prove that mice in the rental unit were caused by the actions of the tenant given that the parties agree that the tenant complained of mice within a week or so of moving into the rental unit.

Based on the above, **I find** the landlord has provided insufficient evidence to prove that the 1 Month Notice dated October 16, 2013 is valid. Therefore, **I cancel** the 1 Month

Notice dated October 16, 2013. As a result, the 1 Month Notice dated October 16, 2013 **is of no force or effect.**

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

Conclusion

The 1 Month Notice issued by the landlord dated October 16, 2013 is cancelled.

The tenancy will 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: December 4, 2013

Residential Tenancy Branch

