



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VILLA ADRIA APT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPC OPB FF
For the tenant: CNC MNDC RP

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for cause and for breach of an agreement with the landlord, and to recover the filing fee.

The tenant applied to 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, and to make repairs to the unit, site or property.

The tenant, an advocate for the tenant, two witnesses for the tenant, and the landlord attended the teleconference 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 parties confirmed that they received documentary evidence packages from each other and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matters

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 in her Application for Dispute Resolution (the "Application"), the most urgent of which is her application to set aside the 1 Month Notice. I find that not all the claims in the tenant's Application is sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 1 Month Notice, and the landlord's request for an order of possession. The balance of the tenant's Application is dismissed, with leave to re-apply.

At the outset of the hearing, by mutual agreement of the parties, the second applicant tenant "DB" was removed from the tenant's Application as "DB" is an occupant and not a tenant. Furthermore, by mutual agreement of the parties, the second respondent "YW" was removed from the tenant's Application as "YW" is not listed as a landlord in the tenancy agreement submitted in evidence.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

A fixed term tenancy began on December 1, 2012, and reverted to a month to month tenancy after November 30, 2013. Monthly rent in the amount of \$1,200.00, which was increased during the tenancy to the current monthly rent of \$1,220.00, is due on the first day of each month. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy.

The tenant confirmed receiving the 1 Month Notice dated April 30, 2014 on May 3, 2014 which was posted to her door. The effective vacancy date of 1 Month Notice is listed as May 30, 2014. The tenant disputed the 1 Month Notice on May 8, 2014, which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following five reasons on the 1 Month Notice:

1. Tenant has allowed an unreasonable number of occupants in the unit/site.
2. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

3. 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.
4. Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.
5. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Regarding reason #1 listed above, the agent stated that it was "obvious" that the tenant had too many occupants and then confirmed that he had no documentary evidence or other evidence such as witness statements to support this cause listed on the 1 Month Notice.

Regarding reason #2 listed above, the agent alleged that the tenant denied the landlord the ability to complete a bed bug treatment in the rental unit. The tenant confirmed that although she denied a bed bug treatment on April 30, 2014, she stated that she was only given notice on the same day and she was unable to leave the rental unit as she has a nine-month old child and the pest control contractor advised her that anyone that is pregnant or with a child under that age of fifteen months should not be in the rental unit when it is treated for bed bugs.

The agent was asked when he provided prior notice to the tenant of the April 30, 2014 bed bug treatment, and the agent stated that it was on June 3, 2014 and later changed his testimony to March 29, 2014. The March 29, 2014 notice submitted in evidence did not refer to April 30, 2014 and indicates five days notice for bed bug treatment from the date of March 29, 2014. The parties confirmed that there is a scheduled bed bug treatment two days after the date of this hearing.

Regarding reasons #3 and #4 listed above, the agent confirmed that he did not have any evidence to present that the tenant committed illegal activity. The agent did not provide evidence to support reasons #3 and #4 during the hearing.

Regarding reason #5 listed above, the agent confirmed that he likely made a mistake in including this reason on the 1 Month Notice dated April 30, 2014, as he was unable to refer to the material term of the tenancy agreement that the tenant allegedly breached. Furthermore, the agent failed to provide evidence to support that the tenant was advised in writing of a breach of a material term of the tenancy agreement and was given a reasonable time to address a breach of a material term of the tenancy agreement.

Analysis

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

When a tenant disputes a 1 Month Notice, 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.

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.

Regarding reason #1 listed above, the agent stated that it was “obvious” that the tenant had too many occupants and then confirmed that he had no documentary evidence or other evidence such as witness statements to support this cause listed on the 1 Month Notice. Based on the above, **I find** that the landlord has provided insufficient evidence to support reason #1 on the 1 Month Notice.

Regarding reason #2 listed above, the agent alleged that the tenant denied the landlord the ability to complete a bed bug treatment in the rental unit. The tenant confirmed that although she denied a bed bug treatment on April 30, 2014, she stated that she was only given notice on the same day and she was unable to leave the rental unit as she has a nine-month old child and the pest control contractor advised her that anyone that is pregnant or with a child under that age of fifteen months should not be in the rental unit when it is treated for bed bugs. The agent was asked when he provided prior notice to the tenant of the April 30, 2014 bed bug treatment, and the agent stated that it was on June 3, 2014 and later changed his testimony to March 29, 2014. The March 29, 2014 notice submitted in evidence did not refer to April 30, 2014 and indicates five days notice for bed bug treatment from the date of March 29, 2014.

I find that the agent has provided insufficient and contradictory evidence that the tenant was advised in advance of a bed bug treatment on April 30, 2014. I prefer the evidence of the tenant as a result, that the tenant was not advised of the April 30, 2014 treatment until the day of the treatment on April 30, 2014. Given the undisputed testimony of the tenant that she has a nine-month old child, I find her reason for refusing treatment on April 30, 2014 to be reasonable. The parties confirmed that a bed bug treatment is scheduled for two days after the date of this hearing. Based on the above, **I find** that the landlord has provided insufficient evidence to support reason #2 on the 1 Month Notice.

Regarding reasons #3 and #4 listed above, the agent confirmed that he did not have any evidence to present that the tenant committed illegal activity. As the agent did not provide evidence to support reasons #3 and #4 during the hearing, **I find** that the landlord has provided insufficient evidence to support reasons #3 and #4 on the 1 Month Notice.

Regarding reason #5 listed above, the agent confirmed that he likely made a mistake in including this reason on the 1 Month Notice dated April 30, 2014, as he was unable to refer to the material term of the tenancy agreement that the tenant allegedly breached. In addition, the agent failed to provide evidence to support that the tenant was advised in writing of a breach of a material term of the tenancy agreement and was given a reasonable time to address a breach of a material term of the tenancy agreement. Based on the above, **I find** that the landlord has provided insufficient evidence to support reason #5 on the 1 Month Notice.

As the landlord has failed to prove that the 1 Month Notice was valid, **I cancel** the 1 Month Notice dated April 30, 2014.

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

I dismiss the landlord's application for an order of possession as a result due to insufficient and contradictory evidence.

As the landlord's application did not have merit, **I do not grant** the landlord the recovery of their filing fee.

The tenant's application had merit.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated April 30, 2014, has been cancelled due to insufficient and contradictory evidence. The tenancy has been ordered to continue until ended in accordance with the *Act*.

The landlord's application did not have merit and is dismissed.

The tenant's application had merit.

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: June 18, 2014

Residential Tenancy Branch

