



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47; and
- other unspecified remedies.

The landlord made no applications with respect in this hearing.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The tenant called one witness and had the assistance of an advocate. The landlord had the assistance of her daughter because of language barriers.

The landlord testified that she was not able to remember when she served the 1 Month Notice. The tenant confirmed receipt of the 1 Month Notice on October 31, 2014 by mail. The tenant also provided a copy of the 1 Month Notice dated October 23, 2014 with an effective date of November 30, 2014. In accordance with section 88 and 90 of the *Act*, I find the tenant has been served with the 1 Month Notice on October 31, 2014.

The tenant testified that he served the landlord with the Notice of Dispute Resolution hearing by personally delivering the notice to the residential property office on October 31, 2014. The tenant's witness confirmed this service. In accordance with section 89 of the *Act*, I find the landlord has been duly served with the Dispute Resolution hearing documents on October 31, 2014.

The tenant's application for more time to make his application was unnecessary. The tenant is permitted 10 days to respond after the receipt of the 1 Month Notice. The application was made in the prescribed amount of time. This portion of the tenant's application was withdrawn.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?
Is the tenant entitled to other, unspecified remedies?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions are reproduced here. The principal and relevant aspects of this matter and my findings around each are set out below.

The tenant testified that this fixed term tenancy began on April, 2014 and is scheduled to end July 1, 2015. The tenant testified that the tenancy is in the form of a written agreement with a rental amount of \$700.00, payable on the first of each month. He further testified that he paid a \$350.00 security deposit on April 3, 2014. The landlord was unable to provide any dates or information with respect to the tenancy. The landlord confirmed that the tenant's rent has been paid for November and that the landlord is holding a cheque for December's rent.

The landlord testified that in approximately July or August 2014, the tenant began to be disruptive to other tenants. The landlord testified that the tenant drinks alcohol and does not remember what he has done the next day. She testified that she had spoken with the tenant "sometime in August" about his behaviour and that he had agreed to move out. The landlord did not provide any written warnings to the tenant with respect to a disruption or an end to the tenancy. The tenant testified that he did not agree to move out and that he does not wish to vacate the rental unit.

The landlord testified that the tenant smokes marijuana inside his suite. She stated that his drinking and smoking marijuana is disturbing and has led her to feel unsafe in the residence. She also states that the tenant has a criminal record and that she was unaware of that fact when she initially rented the unit to him. She testified that he often "gives aggressive looks" and makes sarcastic comments to the landlord and her family.

The tenant testified that he was told in August by the landlord that a neighbour had complained he was too loud. The tenant's advocate testified that this same neighbour had injured the tenant by punching the tenant in the face and biting his finger.

The tenant's witness testified that she was present when the tenant received his eviction notice on October 30, 2014. The tenant's advocate testified that the tenant takes very strong medication and can sound intoxicated. She testified that the tenant has supportive services that attend the residence regularly.

Analysis

The tenant entered into written evidence a copy of the October 23, 2014 1 Month Notice to End Tenancy for Cause from the landlord. In that Notice, requiring the tenant to end this tenancy by November 30, 2014, 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...*

The landlord's claim of significant interference or unreasonable disturbance relies partially on a neighbour's complaint of loud noise. The landlord testified to a specific incident of complaint and a verbal warning to the tenant with respect to that complaint. She also relies on an incident where this neighbour and the tenant had a physical altercation. She testified that she feels unsafe and uncomfortable with the tenant's behaviour.

I find that the landlord has not provided sufficient evidence to support the claim that the tenant has seriously jeopardized the health or safety of lawful right of another occupant or the landlord. The landlord's testimony of intoxication and disturbance were, for the most part, disputed by the tenant. The landlord did not provide any documentary evidence to support her claim in the form of warning letters to the tenant or complaints about the tenant. The tenant testified that the disagreement with the neighbour occurred in July or August.

The tenant's witness testified that the landlord's accusations with respect to drug use and other allegations are false. The tenant's advocate noted that the tenant made an error in checking the box for other, unspecified remedies and does not seek anything further but reinstatement of the tenancy.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. In this case, however, I see insufficient evidence, that the landlord has attempted to mediate, caution or otherwise resolve the issues they perceive with respect to the tenant. I also find insufficient evidence to demonstrate that the landlord has given the tenant any written warnings to alter his behaviour.

I do not find that the landlords have met their burden to show why the tenancy should end.

Conclusion

The tenant's application is allowed. The 1 Month Notice is set aside with the effect that this tenancy shall continue.

The tenant did not seek any other, unspecified remedies.

The tenant's application for more time to make his application is unnecessary. The application was made in the prescribed amount of time. This application is withdrawn.

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: December 2, 2014

Residential Tenancy Branch

