



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHSTAR INTERNATIONAL MOTOR HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 31, 2014 ("1 Month Notice"), pursuant to section 47.

The landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant's support advocate, DF, attended the hearing but did not provide any testimony. The landlord's agent, WJ only attended part of the hearing from approximately 2:04 to 2:17 p.m. and 2:18 to 2:21 p.m. The hearing began at 2:00 p.m. and ended at approximately 2:26 p.m.

The tenant gave sworn testimony that the landlord's 1 Month Notice, which states an effective move-out date of February 1, 2015, was served upon him personally on January 5, 2015. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on January 5, 2015.

The tenant testified that he personally served the landlord's agent, SSM, with his Application for Dispute Resolution hearing package ("Application") on January 13, 2015. The landlord's agent confirmed receipt of the Application on January 13, 2015. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's Application on January 13, 2015.

Preliminary Matter - Adjournment Request

At the outset of the hearing, the landlord's agent requested a five day adjournment of the hearing. The tenant opposed this adjournment request.

The landlord's agent stated that the owner of the landlord company named in this Application was unable to attend this hearing because he had to attend a meeting at City Hall at the same time at 2:00 p.m. The landlord's agent stated that the owner was not planning to attend the meeting initially but then had to attend because someone else became sick. The landlord's agent stated that this issue arose 3 days prior to this hearing but did not provide a reason for why the owner did not attempt to adjourn the hearing earlier. The landlord's agent confirmed that the landlord had notice of the tenant's Application, which was received on January 13, 2015.

The tenant stated that he saw the landlord owner at the rental building at 1:00 p.m. on the day of this hearing. The tenant indicated that WJ is an employee of the landlord who works the night shift at the rental building. The tenant stated that he had not been given any prior notice of the landlord's adjournment request.

In accordance with Rule 6.4 of the Residential Tenancy Branch ("RTB") Rules of Procedure, I make the following findings:

- a) the tenant opposed the landlord's adjournment request;
- b) the purpose of the adjournment would not contribute to the resolution of the matter in accordance with the objectives in RTB Rule 1 for a fair, efficient and consistent process;
 - a. the landlord did not provide any written evidence for this hearing;
 - b. the landlord's agent did not provide any evidence that an adjournment was required to secure evidence or witnesses unable to attend this hearing;
- c) the landlord had sufficient notice of 20 days for this hearing and had an opportunity to call, fax or attend in person at the RTB, in order to request an adjournment prior to this hearing;
 - a. the tenant did not have any prior notice of the landlord's adjournment request or intentions to adjourn the hearing;
 - b. the tenant provided evidence that the landlord owner was present at the rental building just 1 hour prior to this hearing, questioning the authenticity of the landlord's request for an adjournment;
- d) the landlord's agent did not provide any documentary evidence that the landlord could not attend this hearing due to another meeting;
 - a. another landlord representative may have been able to attend the meeting in the landlord's place, given that the meeting attendance issue arose after the landlord had notice of this hearing first;
 - b. the landlord's agent did not provide evidence as to the importance of the meeting and why only the landlord owner could attend the meeting;

- e) the landlord's agent did not provide any evidence as to why only the landlord owner should attend this hearing rather than the landlord's agent or another representative for the landlord;
 - a. the tenant indicated that the landlord's agent attended at his rental unit on the day prior to this hearing and was a night shift employee;
 - b. the landlord's agent potentially had knowledge of this tenancy but chose not to continue with the hearing after initially providing evidence;
- f) the tenant would be prejudiced by an adjournment as the effective move-out date on the 1 Month Notice, of February 1, 2015, had already passed and the landlord was seeking an end to this tenancy;
 - a. the tenant secured a support advocate and attended at a special facility in order to obtain assistance for this hearing;
 - b. the adjournment would only delay these proceedings further, possibly for some time, given that a hearing date within 5 days would be very unlikely;
- g) while there may have been prejudice to the landlord in denying the adjournment request:
 - a. I advised the landlord's agent about the consequences of not attending this hearing, that I would proceed with the hearing, the 1 Month Notice could be cancelled and the tenancy could continue, which may negatively affect the landlord;
 - b. I afforded the landlord's agent an opportunity during the hearing to gather his documents for the hearing;
 - c. I afforded the landlord's agent an opportunity during the hearing to call witnesses to give evidence for this hearing, to which the agent responded that he did not intend to call any witnesses;
 - d. I afforded the landlord an opportunity during the hearing to provide sworn testimony for this hearing, which he initially provided, and then decided not to continue with the hearing after providing some testimony.

For the above reasons, I advised both parties during the hearing that I was denying the landlord's adjournment request and that I was proceeding with the hearing.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled?

Analysis

In accordance with subsection 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on January 5, 2015. The tenant filed his application for dispute resolution on January 13, 2015. Accordingly, the tenant filed within the ten day limit under the *Act*.

Where the tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not submit any written evidence for this hearing or make any submissions regarding the notice. The landlord's agent was not prepared to proceed with the remainder of the hearing after providing initial testimony regarding service. The landlord did not meet its onus of proof. I advised the tenant during the hearing that the 1 Month Notice is cancelled and of no force or effect and that this tenancy continues until it is ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice, dated December 31, 2014 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: February 06, 2015

Residential Tenancy Branch

