



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 26, 2015 ("1 Month Notice"), pursuant to section 47.

The tenant and his advocate, SB (collectively "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. During the hearing, the tenant confirmed that his advocate had authority to make submissions on his behalf at this hearing. This hearing lasted approximately 92 minutes in order to provide the landlord with a fair opportunity to present his position, as he had lengthy submissions to make during the hearing.

Both parties testified that the tenant was served with the landlord's 1 Month Notice at the end of February 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice, as declared by the parties.

The landlord confirmed that he personally received the tenant's application for dispute resolution hearing package ("Application") on March 8, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

Background and Evidence

Both parties agreed that this month to month tenancy began on January 1, 2012 and continues to present. Monthly rent in the amount of \$613.00 is payable on the first day of each month. A security deposit of \$275.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement governs this tenancy but a copy was not provided by either party for this hearing. The landlord rents the property from the owner. The landlord occupies the main house on the 5 acre rural property. The landlord subleases the rental unit, which is a coach house, to the tenant.

The tenant entered into written evidence a copy of the landlord's 1 Month Notice. In that notice, requiring the tenant to vacate the rental unit by March 31, 2015, the landlord cited the following reasons for the issuance of the notice:

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *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.*

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within 10 days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice at the end of February 2015. The tenant filed his Application on March 6, 2015. Although neither party could recall the exact date of service or receipt, the landlord testified at the hearing that he agreed that the tenant was within the 10 day time limit to file his Application to dispute the landlord's 1 Month Notice. Accordingly, I find that the tenant filed his Application within the 10 day limit under the *Act*.

The landlord testified that the tenant significantly interfered with and unreasonably disturbed the landlord and other occupants by doing the following:

- The tenant gets angry, yells and uses foul language repeatedly when speaking to the landlord;
- Other occupants have left the rental unit and have been disturbed by the tenant's yelling and foul language;

- The landlord has suffered increased hypertension problems and two hospital visits partially due to the tenant's behaviour;
- The tenant yells with his door open so the landlord and other neighbours can hear him;
- The tenant slams doors in the rental unit;
- The tenant leaves the fan turned on all day during the summer when he is not present in the rental unit;
- The tenant will not share costs for gas, soap and other expenses with the landlord.

The tenant denied the landlord's above allegations. The tenant stated that the landlord has not provided any documentary evidence to support his claim, including any written witness statements, or produced any witnesses to testify at this hearing. The tenant indicated that many of the landlord's claims are regarding requests for repairs, utilities and increased rent from the tenant.

The landlord also stated that the tenant was late paying rent more than 3 times during this tenancy including on the following dates: September 1, 2012; April 1, 2013; August 1, 2013; December 1, 2013; December 1, 2014.

The tenant stated that he was only late paying rent on two occasions: once in April 2013 and once in January 2014. The tenant stated that he was issued a 10 Day Notice for Unpaid Rent by the landlord in April 2013 and that he paid the rent due within 5 days of receiving the notice. The tenant indicated that he was not given a 10 Day Notice for the late rent payment in January 2014 because he made a verbal agreement with the landlord to pay rent late. The tenant stated that the landlord has fabricated the other dates and the landlord has no documentary evidence that rent was paid late. The landlord stated that he has incurred non-sufficient fund charges when the tenant has paid him rent late but that he has not reviewed his bank records to provide any documentary evidence for this hearing.

The landlord stated that the tenant has engaged in illegal activity that has affected the landlord by having marijuana delivered to him by two males. The landlord stated that he confronted the two males who advised him that they were delivering marijuana to the rental unit and that after this confrontation, the delivery stopped. The landlord stated that he did not call the police or confront the tenant because the situation resolved. The landlord stated that the tenant's rental unit smelled like marijuana before the owner of the property came to the rental unit and that he scolded the tenant about this. The tenant denied the landlord's allegations, noting that he had no recollection of any

marijuana delivery. The tenant advised that the landlord has not provided any documentary evidence including any police reports to substantiate his claims of illegal activity. The tenant also stated that the landlord himself uses marijuana several times per week. The landlord testified that he is a registered medical marijuana user.

Analysis

While I have turned my mind to testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Where a tenant applies to dispute a 1 Month Notice within the required time limits, 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 provide any documentary evidence, including medical records, police reports or witness statements, nor did the landlord produce any witnesses to testify at this hearing.

The landlord has not demonstrated through police records, witness statements or other documentary evidence that the tenant engaged in illegal activity. The tenant denies engaging in any illegal activity. Accordingly, I find that the landlord did not provide sufficient evidence, on a balance of probabilities, to show that the tenant 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, as per section 47(1)(e)(ii) of the *Act*.

The landlord has not demonstrated that the tenant has exhibited a pattern of behaviour that constitutes significant interference or unreasonable disturbance. The landlord did not provide any medical evidence to demonstrate his allegation that the tenant affected his hypertension condition. There were a number of allegations with respect to the tenant yelling, using foul language, slamming doors, leaving the fan turned on, and not sharing costs with the landlord. The tenant denied these allegations. The landlord stated that other occupants vacated the rental unit because of the tenant's behaviour but none of these witnesses testified or provided any witness statements for this hearing. In any event, I do not find these incidents to be a significant interference or an unreasonable disturbance to the landlord or other occupants. Accordingly, I find that the landlord did not provide sufficient evidence, on a balance of probabilities, to demonstrate that the tenant significantly interfered with or unreasonably disturbed the landlord or other occupants, as per section 47(1)(d)(i) of the *Act*.

Residential Tenancy Policy Guideline 38 regarding “Repeated Late Payment of Rent” states the following, in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

The landlord testified that the tenant was late paying rent more than three times. The tenant stated that he was only late paying rent twice. The landlord did not provide any documentary evidence to demonstrate these alleged late rent payments. The alleged late rent payments are also far between, the most recent instances spanning a one year period from December 2013 to December 2014. Accordingly, I find that the landlord did not demonstrate, on a balance of probabilities, that the tenant was late paying rent at least three times during this tenancy or that this was a repeated problem.

For the reasons outlined above, I allow the tenant’s application to cancel the landlord’s 1 Month Notice, dated February 26, 2015. The landlord’s 1 Month Notice is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

I allow the tenant’s application to cancel the landlord’s 1 Month Notice, dated February 26, 2015. The landlord’s 1 Month Notice is hereby 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: April 10, 2015

Residential Tenancy Branch

