



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 section 47 of the *Residential Tenancy Act* (the Act) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

The tenant did not attend this hearing, although I waited until 1006 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing.

Issue(s) to be Decided

Is the 1 Month Notice valid?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began over nine years ago. The rental unit is one of three units in the residential property.

Approximately one year ago a roommate moved into the rental unit. At the time the roommate began occupation, the landlord was informed that it was on a temporary basis.

The landlord informed me that the 1 Month Notice was issued as a result of the conduct of the tenant's roommate. The landlord believes that the roommate is involved in the illegal drug trade.

Other occupants of the residential property have complained about the roommate's conduct. Neighbours of the residential property have complained about the roommate's conduct. The landlord testified that the roommate's conduct makes the other occupants feel unsafe.

At the hearing, the landlord explained that he and the tenant had attempted to resolve the issues regarding the tenancy. The landlord had told the tenant that if the roommate moved out the tenancy would continue. The landlord and tenant agreed that today's hearing would be cancelled.

The landlord informed me that he believed that the problems with the roommate had ended; however, recently the landlord was informed that the roommate had been spending the night at the rental unit.

The landlord testified that approximately three days ago he left a voicemail for the tenant asking the tenant to call the landlord. The tenant did not return the call.

At my request, the landlord telephoned the tenant to ask if he would be attending the hearing. The landlord informed me that the tenant believed that the hearing was cancelled and as a result was working and was now unable to attend the hearing.

Analysis

At the hearing, I informed the landlord that I could not proceed with this application. Procedural fairness and the duty of fairness require that the tenant has the opportunity to be heard.

Although the landlord had the best intentions in acting to preserve the tenancy, in doing so he caused the tenant to believe that he did not need to appear at the hearing. As a result the tenant acted in a way that meant he was then unable to attend at the hearing to present evidence and make submissions.

In order to preserve the tenant's right to be heard in a participatory hearing, I must cancel the 1 Month Notice. The effect of not cancelling the 1 Month Notice would be to expose the tenant to the conclusive presumption in subsection 47(5) of the Act.

For the reasons set out above, the 1 Month Notice is cancelled.

Cancellation of the 1 Month Notice does not mean that the tenant's conduct is acceptable. The reasons set out by the landlord may form the basis for ending the tenancy by way of a second 1 Month Notice.

Conclusion

The 1 Month Notice is cancelled.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 31, 2015

Residential Tenancy Branch

