



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC
For the tenant: CNC

Introduction

This hearing was convened as a result of the cross-applications by the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession based on a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated September 27, 2015. The tenant applied to cancel the 1 Month Notice.

The tenant, a tenant advocate (the “advocate”), the landlord, and an agent for the landlord (the “agent”) 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. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The landlord confirmed that she received and reviewed the tenant’s documentary evidence prior to the hearing. The tenant testified that the only document she was served with was the landlord’s Application for Dispute Resolution. The landlord testified that she served the one page of her documentary evidence but could not recall the date when she served the document. Based on the fact that the one page of documentary evidence only contained six sentences, the landlord was reminded she could read that into evidence during the hearing if required. As a result, the hearing proceeded without consideration of the landlord’s documentary evidence as I am not satisfied that it was properly served on the tenant prior to the hearing in accordance with the Rules of Procedure. I am satisfied that the landlord was properly served by the tenant based on the testimony of the parties confirming this during the hearing.

Issues to be Decided

- Should the 1 Month Notice be upheld or cancelled?
- If the 1 Month Notice is upheld, should an order of possession be granted under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 1, 2015. Monthly rent of \$700 is due on the first day of each month. A security deposit of \$350 was paid by the tenant at the start of the tenancy.

The parties disputed the date in which the 1 Month Notice was served. The landlord testified that she provided an invalid 1 Month Notice on September 27, 2015 but two days later on September 29, 2015 she re-served a valid 1 Month Notice by posting it to the tenant's door on September 29, 2015. The landlord agent stated that she was present to witness the landlord post the notice to the tenant's door. The tenant vehemently disputed that she was served with a proper 1 Month Notice until October 15, 2015, when she found a 1 Month Notice that had been backdated to September 27, 2015 on her door and that she disputed the 1 Month Notice the next day on October 16, 2015. The landlord did not file her application until October 20, 2015.

As the landlord did not provide the time that she served the tenant and did not explain at the start of the hearing that her agent was also going to be relied upon as a witness, I give the agent's testimony no weight. Furthermore, the landlord backdated the 1 Month Notice to September 27, 2015, which should have been dated at the very earliest, September 29, 2015 if it were to be consistent with the landlord's testimony. In addition, the landlord did not file her Application until October 20, 2015, which was four days after the tenant filed her Application, and as a result, I find the testimony of the tenant more consistent and reasonable than that of the landlord. As a result, I prefer the evidence of the tenant that the tenant was not served with a 1 Month Notice in the format required by the *Act* until October 15, 2015.

The effective date of the 1 Month Notice was October 31, 2015, which would automatically correct under section 53 the *Act* to November 30, 2015 regardless of either service date described above. The reason for this is that the deemed service date when posting to the tenant's door pursuant to section 90 of the *Act* is three days after the document is posted. Even if I were to accept that the backdated September 27, 2015 1 Month Notice was posted to the tenant's door on September 29, 2015, which I do not, the tenant would not be deemed served until three days later, which would have

been October 2, 2015, which would automatically correct the effective vacancy date to November 30, 2015 under section 53 of the Act.

The landlord listed the following reason on the 1 Month Notice:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Regarding reason #1 listed above, the landlord began to provide testimony that the tenant had more occupants in the rental unit than herself. As the landlord did not include the cause related to having an unreasonable number of occupants in the rental unit, the landlord was not permitted to continue with evidence related to a cause that was not listed on the 1 Month Notice.

The landlord indicated that the tenant sometimes goes to sleep at 1:00 a.m., which the landlord does not like, but admitted that she wrote on the 1 Month Notice the following:

“We need the Rental unit for family use”

The tenant denied that she has done anything that the landlord has alleged in the 1 Month Notice.

Analysis

Based on the documentary evidence and the oral 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.

Given that the landlord wrote “We need the Rental unit for family use” and that the landlord has provided no supporting documentary evidence or witness testimony to support the 1 Month Notice, and the landlord’s oral testimony is disputed by the tenant, I find the landlord has failed to prove on the balance of probabilities that the 1 Month Notice is valid. Therefore, **I cancel** the 1 Month Notice dated September 27, 2015 due to insufficient evidence.

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

Conclusion

The tenant's application is successful.

The landlord's application is dismissed.

The 1 Month Notice to End Tenancy for Cause dated September 27, 2015 has been set aside due to insufficient evidence. The tenancy shall continue until ended in accordance with the *Act*.

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: December 8, 2015

Residential Tenancy Branch

