



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated January 27, 2016 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and his agent, TC (collectively "landlord") and the tenant, SLA ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that she had authority to represent "tenant JM," the other tenant named in this application as an agent at this hearing. The landlord confirmed that his agent was a property manager for this rental building and that she had authority to speak on his behalf at this hearing. This hearing lasted approximately 64 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' dispute resolution hearing notice and application ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application. Both parties confirmed that they did not submit any written evidence for this hearing.

The tenant confirmed personal receipt of the landlord's 1 Month Notice to End Tenancy for Cause, dated January 27, 2016 ("1 Month Notice") on the same date, the date that the landlord said it was served upon the tenants. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on January 27, 2016. As I had not received a copy of the notice prior to the hearing, I asked the landlord to provide me with a copy after the hearing, by way of facsimile. I received the notice from the landlord and considered it prior to writing my decision. The

landlord also provided a copy of an unfiled landlord's application for dispute resolution after the hearing, without my request, so I did not consider it in my decision.

Preliminary Issue – Tenants' Application to Cancel 1 Month Notice

As per section 47(4) of the *Act*, the tenants are required to dispute the 1 Month Notice within 10 days of receipt. The tenants applied on February 9, 2016. The tenants were required to apply by February 6, 2016, to cancel the 1 Month Notice. However, this date fell on a Saturday when the Residential Tenancy Branch ("RTB") offices are closed. Therefore, the tenants were required to apply by the next business day, which was Monday, February 8, 2016. The tenants were one day late in applying to cancel the notice. The tenant stated that she was attempting to reach the RTB office by telephone on February 8, 2016, and the RTB answered her question at the end of the day, such that she could not file the Application until February 9, 2016. She noted that the RTB advised her that her Application was filed on time and she was not late. The tenant said she did not realize she exceeded the 10 day deadline and therefore, the tenants did not ask for more time to cancel the 1 Month Notice in their Application.

During the hearing, the tenant requested to amend the tenants' application to ask for more time to cancel the 1 Month Notice. The landlord opposed this request saying that the tenant is out of time to apply to cancel the notice and the conclusive presumption is that she accepts and agrees to vacate the rental unit.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to include a request for more time to cancel the 1 Month Notice under section 66 of the *Act*. I further grant the tenants more time to cancel the 1 Month Notice under section 66(1), as I find that they only applied one day late and I accept the tenant's testimony that she attempted to contact the RTB to get information and received it late, so that the tenants' Application was delayed for this reason. I also find that the tenants did not apply past the effective date of the 1 Month Notice, such that section 66(3) does not apply.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Are the tenants entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the testimony of the parties, as no documentary evidence was submitted except for the 1 Month Notice, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

Both parties agreed that this month-to-month tenancy began on October 15, 2014. Monthly rent in the amount of \$975.00 is payable on the first day of each month. The landlord testified that a security deposit of \$487.50 was paid by the tenants and the landlord continues to retain this deposit. The tenant could not confirm the amount of the deposit but said that it was paid to the landlord. The landlord said that he could not locate a written copy of the tenancy agreement, while the tenant said that she never signed one. The tenants continue to reside in the rental unit. The rental unit is a two-bedroom apartment of approximately 1,200 square feet in a 14-unit, 4-storey building.

The landlord issued the 1 Month Notice with an effective date of February 29, 2016, for the following reasons:

- *Tenant has allowed an unreasonable number of occupants in the unit/site*
- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - *put the landlord's property at significant risk.*
- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*
- *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

The landlord said that the tenant has allowed an unreasonable number of occupants in her unit. He said that the tenant has truck drivers from her business stay over at her rental unit on a regular basis, that she has four full-size beds in her unit, and that she has four to five people in her unit at one given time on a temporary basis. The tenant said that she only has one guest stay over at her rental unit for no longer than four nights at one given time, that she only has two full-size beds and one kid's bed in her unit for one adult guest, one child guest and herself, and that she has only had five guests in her unit at one time for one weekend. The tenant denied subletting her rental unit or collecting rent from any of her guests, while the landlord said that he did not know whether the tenant was collecting rent from her guests.

The landlord claimed that the tenant has put the landlord's property at significant risk by running a business in her rental unit, parking an uninsured vehicle in the landlord's

nearby commercial parking lot, and allowing truck drivers from her business to park their large and numerous trucks in the parking lot, taking up additional parking spaces. The tenant denied all of the above allegations, stating that she was working from home not running a business from there as she does not own a business. She said that her vehicle was insured but for safety reasons she does not display her insurance in the vehicle. She also noted that she does not have truck drivers park their trucks in the parking lot, as only one truck driver usually visits her.

The landlord said that the tenant has significantly interfered with and unreasonably disturbed other occupants in the rental building by having loud parties, smoking marijuana and throwing cigarette butts off her balcony. The landlord said that four to ten complaints were received in the past year from neighbouring occupants in the same rental building. The tenant denied the above allegations, saying that she was not notified by the landlord of any complaints against her, except for one time in December 2015 when she was not in her unit and there was no party in her unit while she was away. She said that she gets along well with her neighbours and they have not complained to her. She said that both tenants do not smoke marijuana at all. She confirmed that she has an ashtray to throw away cigarette butts, which she does not discard from her balcony which faces the front door, and that she has seen other occupants discard cigarette butts at the front entrance.

Analysis

As I have granted the tenants more time to cancel the 1 Month Notice, it is the landlord's burden of proof, on a balance of probabilities, to show that the 1 Month Notice was issued for valid reasons. I find that the landlord failed to meet this burden for the reasons noted below.

The landlord did not provide any written evidence or independent witness testimony at this hearing. Aside from the two parties, the landlord's property manager, who is not independent and works for the landlord at this rental building, was the only other person to provide testimony at this hearing.

I find that the landlord provided insufficient evidence to show that the tenant had an unreasonable number of occupants in her rental unit or that she assigned or sublet the unit without the landlord's written consent. The tenant denied assigning or subletting the unit. The landlord's property manager said that she spoke to one of the truck drivers who said that he stayed at the unit, which I find is hearsay as this person did not testify at the hearing. The property manager testified that she has seen other people and their beds in the unit, which the tenant acknowledged. I do not find four to five

guests staying for a short temporary period of time to be an unreasonable amount of occupants, given that it is a two bedroom apartment and the tenant is permitted to have guests at her rental unit that the landlord cannot unreasonably restrict, as per section 30 of the *Act*.

I find that the landlord provided insufficient evidence that the tenant put the landlord's property at significant risk. I find that the landlord failed to prove that the tenant parks an uninsured vehicle at the commercial lot, that the tenant has truck drivers use additional parking spaces at the rental building, and that the tenant runs a business from home. The tenant denied the above allegations and the landlord failed to provide documentary or witness evidence. I also find that the above allegations do not pose a significant risk to the landlord's property in any event.

I find that the landlord failed to provide sufficient evidence that the tenant or other people permitted on the property by the tenant, significantly interfered with or unreasonably disturbed other occupants or the landlord. The tenant denied the landlord's allegations about smoking marijuana, throwing cigarette butts off her balcony and having loud parties. The landlord did not produce witnesses or documentary evidence and did not show how the above actions significantly interfered with or unreasonably disturbed anyone.

The landlord acknowledged that he misunderstood the reason on the notice indicating that the tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit. He stated that the tenant gave false information in her tenancy application. Accordingly, I find that the landlord did not provide evidence regarding the above reason.

Accordingly, I allow the tenants' Application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated January 27, 2016, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in this Application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' Application to amend their claim and for more time to cancel the 1 Month Notice is allowed.

The tenants' Application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated January 27, 2016, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to deduct \$100.00 from a future rent payment at the rental unit in full satisfaction of the monetary award for the filing fee.

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: March 29, 2016

Residential Tenancy Branch

