



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. At the outset both parties confirmed that the landlord had cancelled the 10 Day Notice dated May 17, 2016. As such no further action is required for this portion of the tenant's application.

The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on May 7, 2016. The landlord provided direct testimony confirming that the notice of hearing package was received in this manner. I find that as both parties have attended and have confirmed receipt of the notice of hearing package that both parties have complied with section 89 of the Act. The landlord is deemed to have received the notice of hearing package 5 days later as per section 90 of the Act.

The landlord confirmed receipt of the tenant's submitted documentary evidence. The tenant has confirmed receipt of the landlord's submitted documentary evidence. As per section 88 as both parties have confirmed receipt of the submitted documentary evidence and are ready to proceed, I find that both parties have complied with section 88 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

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

This tenancy began on October 1, 1999 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated September 11, 1999. The original monthly rent was \$460.00 and a security deposit of \$230.00 was paid on October 1, 1999.

Both parties confirmed that on April 26, 2016, the landlord served the tenant with the 1 Month Notice dated April 26, 2016 by posting it to the rental unit door. The 1 Month Notice displays an effective end of tenancy date of May 31, 2016 and sets out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord provided evidence and clarified that the 1 Month Notice was being given for:

- Bedbugs that originated within the rental premises and that the tenant failed to comply with treatment instructions.
- The tenant's roommate, R.S. had verbally abused the landlord by threatening physical harm.
- The tenant's roommate, R.S. had threatened another tenant.

The landlord stated that the pest control inspectors told the landlord that, "unit 101... was extremely active and was most likely the initial unit with the bed bug activity. This would be due to the level (high) of bed bug activity found in the unit compared to the others. Preparation for this unit was also an issue, as was mentioned by both technicians at the times of each treatment." The landlord relies upon this statement that the tenant failed to comply with treatment instructions.

The tenant does not dispute that bed bugs were present and that her unit was most likely the initial unit with bed bug activity, but the tenant disputed the claims made by the landlord that she failed to comply with treatment instructions. The tenant also disputes that, R.S. has threatened the landlord or any other tenants.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to support his claim that the tenant failed to comply with treatment instructions, verbally threatened the physical health of the landlord's agent or another tenant. The landlord relied solely on direct testimony that was primarily third party claims. The tenant has disputed the claims of the landlord. The landlord's 1 Month Notice dated April 26, 2016 is set aside. The tenant's application is granted.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. The tenancy shall continue.

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: June 07, 2016

Residential Tenancy Branch