



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy, for an Order to cancel the One Month Notice to End Tenancy for Cause; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Residential Tenancy Act (Act)*; served in person to the landlord on June 08, 2016.

The tenant appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenant presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Preliminary Issues

The tenant has applied for more time to file her application to dispute the Notice to End Tenancy. The tenant testified that she was served in person with the One Month Notice on May 31, 2016 and filed her application to dispute the Notice on June 06, 2016. As the *Act* allows the tenant 10 days from being served a One Month Notice to apply to dispute it, the tenant did apply within that allowable time frame and extra time is not required.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?

Background and Evidence

The tenants testified that this tenancy started on April 01, 2015 for a month to month tenancy. No written tenancy agreement was signed; however an addendum to the verbal agreement was signed. Rent for this unit is now \$1,440.00 per month due on the 1st day of each month.

The tenants testified that the landlord served the tenants with a One Month Notice to End Tenancy for cause. This Notice was served as stated above in person on May 31, 2016 and has an effective date of June 31, 2016. The Notice provides the following reasons to end the tenancy:

- 1) The tenant is repeatedly late paying rent.
- 2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (i) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property
- 3) The tenant has assigned or sublet the rental unit without the landlords' written consent.

The tenant has provided a copy of the Notice in documentary evidence. The tenant testified that the landlord wants the tenant to pay rent in cash each month although there is nothing in writing to this effect. When the tenant has attempted to pay by cheque the landlord refuses to accept it.

The tenant disputed that she has engaged in any illegal activities.

The tenant testified that there is no written tenancy agreement between the tenant and the landlord and the landlord has known about a second tenant living in the unit for the last year and never had any issues with this and accepted that this tenant also pays rent.

The tenant seeks to have the Notice cancelled and requested the recovery of the filing fee of \$100.00 from the landlord.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of the landlord or a representative of the landlord, I have carefully considered the tenant's documentary evidence and testimony before me.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord does not provide any evidence to satisfy the burden of proof and the tenant disputes the Notice then I have no evidence to support the reasons given on the Notice.

If the tenant tries to pay the rent and the landlord refuses to accept it then this does not warrant the landlord's attempt to end the tenancy for repeatedly late payments of rent. The tenant's only obligation under the *Act* is to pay rent on the day it is due and the *Act* does not specify how that rent must be paid.

The landlord has not shown any illegal activities taking place on the rental property or that the tenant has assigned or sublet the rental unit. There is no written tenancy agreement in place stating how many tenants can reside in the rental unit or that the tenant must obtain written permission before allowing any other occupants to reside in the unit. If this other person has lived in the unit for the last year with the landlord's knowledge then I would consider it to be an implied tenancy.

Consequently, I find that the landlord has insufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated, May 31, 2016 is cancelled and the tenancy will continue.

As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the **\$100.00** filing fee for this application and may deduct that amount from their next rent payment in August when it is due and payable to the landlord.

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: July 14, 2016

Residential Tenancy Branch