



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WITMAR HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel the One Month Notice to End Tenancy for Cause.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on June 23, 2016. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. The landlord also provided some documentary evidence although failed to appear at the hearing despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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 tenant testified that this tenancy originally started with two other tenants and the tenant resided in the rental unit with them. The tenant took over the tenancy when the other tenants moved overseas on February 20, 2015. The tenancy was then a month to month tenancy. Rent for this unit is now \$820.00 per month due on the 1st day of each month.

The tenant testified that he was served an unsigned copy of a One Month Notice to End Tenancy for cause on June 09, 2016, although this Notice had a date it was issued as July 09, 2016. The Notice has an effective date of July 12, 2016. The tenant has provided a copy of the Notice in documentary evidence. The Notice provides the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- 2) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (ii) *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, or*
- 3) *The tenant has assigned or sublet the rental unit without the landlords' written consent*

The tenant testified that he is a quiet tenant and has not jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; the tenant disputed that he has engaged in any illegal activities and disputed that he has assigned or sublet the rental unit. The tenant testified that when he moved into the unit the original lease agreement states that the unit is for two people, the tenant has continued to live there and had another person residing with him.

The tenant seeks to have the Notice cancelled and for the tenancy to continue.

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 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 sufficient evidence to satisfy the burden of proof and the tenant disputes the Notice then I have insufficient evidence to support the reasons given on the Notice.

Furthermore, the tenant's copy of the Notice has a different date to the copy provided by the landlord. The tenant's copy is dated July 09, 2016 and the landlord's copy has this

date crossed out and changed to June 09, 2016. Both copies provided are unsigned. To this effect I refer the parties to s. 52(a) of the *Act* which states:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice

Consequently, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and the Notice has not been signed by the landlord. 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 is cancelled and the tenancy will 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: August 02, 2016

Residential Tenancy Branch

