



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERNUM PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- 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. The tenants provided affirmed testimony that the landlord was served with the notice of hearing package in person on July 5, 2016. The landlord confirmed receipt of the notice of hearing package in this matter on July 5, 2016. The tenants also stated that the landlord was served with a 1 page documentary evidence submission in person on July 8, 2016. The landlord has also confirmed receipt of the 1 page of documentary evidence from the tenants as claimed. The landlord confirmed that no documentary evidence has been submitted by the landlord. I accept the undisputed affirmed evidence of both parties and find that each party has been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants 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.

The tenants seek an order cancelling the 1 Month Notice dated June 24, 2016 and has provided written details stating,

Wife went off meds, called cops for imaginary assault by. No charges Police closed file #...

The landlord seeks an order of possession to end the tenancy.

On June 24, 2016, the landlord served the tenant with the 1 Month Notice dated June 24, 2016. The 1 Month Notice sets out an effective end of tenancy date of July 30, 2016 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
 - Jeopardize a lawful right or interest of another occupant or the landlord.

A handwritten notation of the 1 Month Notice also states,

Dealing + Doing Drugs, Harming roommate, cause police action.

The landlord provided affirmed testimony that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk due to the police attending the rental unit site. The tenant has disputed this claim by the landlord. When asked to clarify the landlord stated that he was unable to provide any specific details, but only stated that the police attendance has caused all of these things listed in the reasons for cause.

The landlord has also stated that the tenant, D.B. is "dealing and doing drugs". The landlord stated that the tenant, L.B. admitted this to the landlord in a verbal statement to him. The tenant has disputed this claim stating that he does not sell or use drugs. The tenant, L.B. provided direct testimony disputing the landlord's claim stating that at no

time has she given a statement to the landlord that D.B. is selling or using drugs. The tenant, L.B. stated that she is on oxygen treatment and that “no smoke is in the house” and that D.B. only smokes outside off the property.

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.

I accept the evidence of both parties and find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me of his claims.

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.

In this case, the landlord has served the tenants with a 1 Month Notice claiming that the tenants are selling and using drugs in the rental unit. The landlord relies upon a verbal statement of the tenant, L.B. given to the landlord that she was a witness to the tenant, D.B. selling and using drugs on the rental property. The tenant, L.B. provided direct testimony contradicting this statement and stated that the tenant, D.B. does not smoke on the rental property as she is on oxygen therapy.

The landlord also claims that the tenants have caused the landlord to be significantly interfered with or unreasonably disturbed, jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk due to the police attending the rental unit site. The landlord was unable to provide any specific details related to the reasons for cause noted on the 1 Month Notice issued or of any supporting evidence.

Based upon the above noted, I find that the landlord has failed to provide sufficient evidence to satisfy me of the reasons for cause noted in the 1 Month Notice dated June 24, 2016. As such, the 1 Month Notice is set aside and the tenancy shall continue.

Conclusion

The tenant's application to cancel the 1 Month Notice dated June 24, 2016 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: August 17, 2016

Residential Tenancy Branch