



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF; CNC

Introduction

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

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;

The landlord and tenant AD (the "tenant") attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

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

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the testimony of the parties, the tenancy began on May 1, 2016 on a month-to-month basis. Rent in the amount of \$850.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$420.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified that the tenant was personally served with the landlord's 1 Month Notice, dated June 30, 2016 on the same date, at the rental unit. The landlord provided a signed, witness proof of service. The landlord provided the agent that served the 1 Month Notice as a witness. This witness testified that he personally served the 1 Month Notice on June 30, 2016 to the tenant. The individual that signed the witness proof of service testified that he printed the 1 Month Notice from his computer, gave it to the agent and watched him serve it to the tenant on June 30, 2016.

The tenant contends that he did not receive the 1 Month Notice on June 30, 2016; he only received a receipt for rent payment this date and that is what the witness observed.

I prefer the testimony of the landlord over the tenant's. The landlord has provided corroborating witnesses whereas the tenant has not. Further the tenant has not provided a copy of a rent receipt to support his position. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 1 Month Notice on June 30, 2016.

The grounds to end the tenancy cited in the 1 Month Notice were;

- the tenant or a 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 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

Landlord

The landlord testified that the primary reason for issuing the 1 Month Notice is her fear that the tenant poses a danger to the property and neighbours. The landlord has received reports from the caretaker and neighbours that the tenant hosts known drug addicts on a continual basis. The landlord has also received reports of a chemical smell emanating from the rental unit. The landlord has surmised that the tenant is storing drug related chemicals. The landlord fears the activity the tenants are engaged in pose a safety risk. The landlord has provided witness statements from neighbours attesting to the continuous traffic of "unfavourable people" in and out of the rental unit, and "suspicious" activity. The landlord also provided a log written by a neighbour that records the activity of the rental unit from July 12, 2016 to August 15, 2016.

Tenant

The tenant testified that he previously worked for a local mission in town and consequently knows a lot of “street people.” He acknowledged these individuals visit him at the rental unit.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord 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.

The onus is on the landlord to prove the reasons indicated on the 1 Month Notice. The landlord provided evidence in the form of testimony, witness testimony, and witness statements regarding the suspicious activity that led to the 1 Month Notice being issued.

Although the witness statements and testimony of the landlord allude to suspicious activity that could seriously jeopardized the health or safety or lawful right of another occupant or the landlord, there is insufficient evidence to show the tenant or guests behaviour did jeopardize the health and safety of another occupant. The observations recorded in the witness statements are observations of people coming and going from the rental unit, not observations of dangerous activity. There is insufficient evidence to establish the smell of chemicals is in fact from the rental unit and that of a drug related origin. I do not find the activity as described by the landlord, witness and witness statements constitutes a health or safety risk to others. Therefore I find the landlord has not met the burden of proof and the tenancy cannot end on this ground.

In relation to the landlord’s claim that the tenant has engaged in illegal activity, the landlord has provided insufficient evidence to prove illegal activity. Although each party testified to a police incident that occurred in August of 2016, this incident occurred following the issuance of the 1 Month Notice and therefore cannot form the basis of the 1 Month Notice.

Overall, I find the landlord has not met the burden of proof and accordingly, I uphold the tenant’s application to cancel the 1 Month Notice.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld, the tenancy continues until it has ended in accordance with the *Act*.

The landlord's entire application is dismissed without leave to reapply.

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: October 28, 2016

Residential Tenancy Branch