



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on September 9, 2016. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause.

The hearing was conducted via teleconference and was attended by the Landlord's Agent (Landlord) and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord testified they received copies of the Tenant's application for Dispute Resolution and notice of hearing documents. He stated he was not aware of any documentary evidence being submitted on behalf of the Landlord in response to this application.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the 1 Month Notice to end tenancy issued August 31, 2016 be upheld or cancelled?

Background and Evidence

The Tenancy began occupying the rental unit in approximately February 2016. Rent of \$450.00 is payable in advance by the first of each month and the Tenant paid \$225.00 as the security deposit.

The rental unit was described as a single room occupancy (SRO) hotel. The Landlord initially stated the tenancy agreement was verbal and later referenced a crime free document which he asserted the Tenant had signed agreeing to no visitors after 10:00 p.m.

The Landlord testified that the 1 Month Notice was issued because of property damage caused to the Tenant's door when the Tenant's guests attempted to gain entry into his room and because the Tenant is constantly having guests over after 10:00 p.m.

After the Landlord submitted the aforementioned arguments, the Landlord asserted the Tenant served the manager five days late with his application to dispute the Notice. He argued the Notice as served upon the Tenant on August 28, 2016 and the Manager did not receive the application until September 14, 2016.

As per the copy submitted into evidence, the 1 Month Notice was issued August 31, 2016 pursuant to Section 47(1) of the Act listing an effective date of September 30, 2016 for the following reasons:

- 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
 - Put the Landlord's property at significant risk

The Tenant testified he wished to resolve this matter peacefully. He confirmed that someone came to his door knocking and when he did not answer they attempted to break in causing damage to his door handle. The Tenant asserted he has attempted to repair the handle by replacing it with another one; however, he admitted it was not as good as the previous handle had been.

The Tenant asserted that he is not letting people into the building after 10:00 p.m. and he was not having guests over late in the evening. He argued the building was not secure and the people who are gaining access are not his guests. He stated there are random people simply walking in off the street and repeatedly knocking on doors until someone lets them in. He submitted he has learned his lesson and he does not open his own door to anyone now. The Tenant stated the Landlord does not have the front desk staffed at night and he has knowledge there has been issues with random people walking in off the street and causing problems for years.

The Tenant asserted he had filed his application within the required timeframe. He stated he received the Notice posted on his door two or three days before he filed his application on September 9, 2016. He argued the manager was not always in the building so it took him a couple days before he could find the manager to be able to serve him the copies of his application and hearing papers.

The Landlord stated he was not able to elaborate more on their submissions as he was simply reading from the notes on file. He then submitted that the Tenant had been issued warning letters one dated October 21, 2016, after the Notice was issued, and another one on July 12, 2016. The Landlord confirmed that there are no employees at the front desk after midnight. He also confirmed there have been ongoing problems with people gaining entry to the building in the evenings.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

In this matter I favored the submissions of the Tenant over the submissions of the Landlord, as the Tenant's submissions were forthright and credible. The Landlord provided contradictory testimony initially stating the tenancy was verbal and then referring to a written crime free agreement. In addition the Landlord argued the Tenant filed his application to dispute the Notice late because the Notice had been served August 28, 2016 when he had previously confirmed that Notice had not even been issued or signed until August 31, 2016. Furthermore, the Tenant's willingness to admit fault when he did not open his door, which ultimately caused the people to cause damage to his door handle, lends credibility to all of the Tenant's evidence.

Based on the above, I find the Landlord submitted insufficient evidence to prove the reasons for issuing the 1 Month Notice to end tenancy issued August 31, 2016. Accordingly, I find in favor of the Tenant and the 1 Month Notice to end tenancy issued August 31, 2016 is cancelled and is of no force or effect. This tenancy shall continue until such time as it is ended in accordance with the *Act*.

Although there was evidence before me that the Tenant's door handle sustained damage, the matter before me was not a landlord's claim for damages. As such, no findings of fact or law have been made with respect to that damage.

Conclusion

The Tenant was successful with their application and the 1 Month Notice to end tenancy issued August 31, 2016 was cancelled.

This decision is final, legally binding, and 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: November 10, 2016

Residential Tenancy Branch