



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for cause.

The landlord and the tenant attended the hearing and the tenant was accompanied by a support person who did not testify or take part in the proceedings. The parties were given the opportunity to question each other, and no issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began 3 or 4 years ago and the tenant still resides in the rental unit. Rent in the amount of \$435.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant, which the landlord believes was \$217.50 and no pet damage deposit was collected. The rental unit is an apartment, and a written tenancy agreement exists, but has not been provided for this hearing.

The landlord further testified that on August 31, 2016 an employee of the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it, a copy

of which has been provided by the tenant. It is dated August 31, 2016, however no effective date of vacancy has been written into the notice. The reasons for issuing the notice state:

- 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 landlord further testified that the tenant was smoking inside the rental unit, which is not permitted under the tenancy agreement. The tenant was so inebriated that a staff person had to approach the tenant, remind him that smoking is not permitted, and the tenant became argumentative. Another tenant had started a fire by smoking in the rental unit which is why the landlord is so sensitive, and the tenant was aware of that previous incident.

The tenant testified that he actually moved into this rental unit on December 1, 2010 and paid a security deposit in the amount of \$350.00 which is still held in trust by the landlord.

The tenant further testified that he hasn't smoked inside the rental unit since the landlord served the notice. The tenant found the notice in the mailbox on September 1, 2016. The landlord has not provided any warning notices to the tenant, and the tenant is sorry that he smoked.

Analysis

During the course of the hearing, I advised the parties that since the tenant's application was originally submitted to the Residential Tenancy Branch on September 7, 2016, and given the landlord's testimony that the 1 Month Notice to End Tenancy for Cause was posted to the door of the rental unit, or placed in the mailbox, the tenant has applied within the 10 days as required by the *Residential Tenancy Act*, no additional time is required and the tenant's application for more time is not necessary.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. The *Act* also specifies in what instances a landlord may give a tenant such a notice ending the tenancy. In this case, the tenant smoked a cigarette in the rental unit, and became argumentative when approached to put it out. I accept the landlord's testimony that a previous incident with a different tenant caused a fire, however in order for me to uphold the notice, I must be

satisfied that the incident was a serious health, safety or infringement of a lawful right of another occupant or the landlord, or that smoking caused the landlord's property to be at significant risk. Although smoking is clearly not permitted inside the rental unit, I am not satisfied that the one incident since December 1, 2010 is significant enough to warrant ending the tenancy.

In the circumstances, I find that the notice ought to be cancelled, and I so cancel it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated August 31, 2016 is hereby cancelled and the tenancy continues.

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: November 01, 2016

Residential Tenancy Branch