



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

Preliminary Issue – 1 Month Notice

At the outset of the hearing I advised the parties that because the file did not contain a copy of the 1 Month Notice I required a copy by the end of the working day. The landlord agreed to fax the 1 Month Notice to the Residential Tenancy Branch. I provided a fax number and instructed the landlord to include my name and file number. To date, I have not received a copy of the 1 Month Notice.

Preliminary Issue – Service of Landlord's Evidence Package

The landlord testified that on November 30, 2016 she forwarded a 50 page evidence package via registered mail to the tenant. The landlord provided a Canada Post tracking number as proof of service.

The tenant testified that he often works out of town and did not receive the landlord's evidence package. Residential Tenancy Policy Guideline #12, Service Provisions establishes that unless there is evidence to the contrary, a document is considered or "deemed" received on the fifth day after the documents are sent via registered mail.

In the absence of clear evidence from the tenant substantiating his claim that he was out of town during the time of service, I find in accordance with sections 88 and 90 of the *Act*, that the tenant has been deemed served with the 50 page evidence package on December 5, 2016, the fifth day after its registered mailing.

Preliminary Issue – More Time

The tenant confirmed receipt of the landlord's 1 Month Notice, dated October 5, 2016 by way of registered mail, on October 24, 2016.

Section 49.1 of the *Act* provides that upon receipt of a notice to end tenancy the tenant may, within 10 days after receiving the notice, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Because the 1 Month Notice has been duly served on October 24, 2016 the tenant was required to file his application to dispute the 1 Month Notice no later than November 3, 2016. The tenant filed his application on October 24, 2016, well within the allotted time. Therefore I dismiss the tenant's application for more time to make an application to cancel the landlord's 1 Month Notice without leave to reapply.

Issue(s) to be Decided

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on November 1, 2014 on a fixed term until October 31, 2015 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,700.00 is payable on the first each month. The tenant remitted a security deposit in the amount of \$850.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated October 5, 2016 by way of registered mail on October 24, 2016. Although neither party provided a copy of the 1 Month Notice, the parties testified that the grounds to end the tenancy cited in that 1 Month Notice were;

- tenant or a person permitted on the property by the tenant has put the landlords property at significant risk

- tenant or a person permitted on the property by 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
- tenant has assigned or sublet the rental unit/site without landlord's written consent

Landlord

The landlord testified that the 1 Month Notice was issued on the basis that the tenant was subletting the rental unit through the home stay website AirBnB. It is the landlord's position that this action is in contravention of the signed tenancy agreement and city by-laws. The landlord testified that because her insurance policy does not cover such rental arrangements the tenant's action of subletting the rental unit through AirBnB put her property at significant risk. In an effort to support her position, the landlord has provided a copy of the AirBnB listing the rental unit, signed tenancy agreement, email correspondence, city bylaws, insurance coverage, email correspondence from insurer provider and copies of strata bylaw contravention letters regarding noise.

Tenant

During the hearing, when it was the tenant's opportunity to present his position he simply stated that he did not agree with the landlord's statements. When asked to elaborate, the tenant testified that he did not damage the rental unit or disturb other occupants. He stated that he only received two noise complaints which he already paid the fines for. The tenant was silent on the allegation he was subletting the rental unit through AirBnB, until he was asked directly to reply to this allegation. The tenant stated that this was a false accusation. The tenant testified that it is his belief that the landlord wants to end the tenancy in order to collect a higher rent.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. The onus is on the landlord to prove the action by the tenant or person permitted on the property has put the landlord's property at significant risk.

I find the landlord has provided sufficient evidence to establish the tenant was renting the rental unit through AirBnB, which is not covered under her insurance policy thus bringing significant risk to the landlord's property.

I am satisfied on the evidence that the landlord has established grounds to end this tenancy on the basis that the tenant put the landlord's property at risk. I dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In the absence of a submitted copy of the 1 Month Notice I find I cannot definitively conclude the 1 Month Notice complies with section 52. Although I dismiss the tenant's application, I make no finding on the issuance of the order of possession as I find the landlord has not met the burden of proof in establishing entitlement to any such order.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

An order of possession is not granted to the landlord.

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: December 16, 2016

Residential Tenancy Branch