



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AVALON HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was reconvened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause. At the original hearing the matter was adjourned as the tenant was meeting with his doctor, support workers and the landlord to attempt to find a remedy to the situation without the need for dispute resolution. If no solution was reached then the hearing would be reconvened today.

At the reconvened hearing only the tenant and his advocate appeared and the tenant gave sworn testimony. The hearing did not commence for 10 minutes while I waited to see if anyone for the landlord was going to attend. Service of the hearing documents, by the tenant's advocate to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on January 07, 2017. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?

Background and Evidence

The tenant is living in a rented room in this hotel which is provided for men with independent living skills. Many of the tenants struggle with mental illness and addiction issues. The management's role, in partnership with the Outlook Society, sees that every person has access to resources to help them with their personal mental and physical wellbeing

The tenant's advocate agreed that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) on December 20, 2016. A copy of the Notice has been provided in documentary evidence and shows an effective date of January 31, 2017. The reason provided on the Notice is that 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 disputed the reason given on the Notice to End Tenancy. The tenant could not recall how the Notice was served upon him. The tenant seeks to have the Notice set aside. The tenant's advocate submitted that they did have a meeting after the last hearing and nothing was resolved at that meeting. Another meeting was scheduled and the tenant's advocate does not know if any agreement was reached between the tenant, his support worker and the landlord.

Analysis

The landlord did not appear at the reconvened hearing to dispute the tenant's application, despite having been given a Notice of the hearing.

Clearly the tenant has some health issues and the tenant is currently receiving some support from workers and his advocate. While the parties agreed at the original hearing on February 08, 2017 that a meeting was to be held after the hearing no one from the landlord has attended the reconvened hearing to discuss whether or not any

agreements had been reached concerning the tenancy. The tenant who did attend the reconvened hearing was not able to provide any conclusive reasoning as he was not able to remember any dates or events pertaining to his tenancy or the meetings that took place. While I do have some documentary evidence from the landlord outlining their concerns with the tenant, this evidence standing alone is not sufficient for me to uphold the reason given on the Notice without the landlord's attendance at the hearing.

The landlord has the burden of proof and must show that grounds exist to end the tenancy. This means that if the landlord does not appear at the hearing to provide testimony to satisfy the burden of proof and the tenant disputes the Notice then I have insufficient evidence to support the reason given on the Notice.

Consequently, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, December 30, 2016 is cancelled and the tenancy will 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: February 08, 2017

Residential Tenancy Branch