



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SY MANAGMENT INC

DECISION

Dispute Codes OPC, FF

Introduction and Analysis

This hearing was convened as a result of an application by the landlord dated January 19, 2017, brought under the *Residential Tenancy Act* (the “Act”) and based on a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”). The landlord sought an order of possession and authorization to recover the application filing fee.

An employee of the corporate landlord appeared at the hearing. The tenant also attended. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony.

Service of the landlord’s application and the notice of hearing was not at issue. The tenant acknowledged having received both these documents.

However, the tenant did not acknowledge that he had received the 1 Month Notice. The landlord’s agent testified that she had served him on December 7, 2016 by handing it to him. She reminded the tenant that she had knocked on his door as the landlord was trying to repair the lock on the door, and as the hallway was flooding. She stated that the tenant and his girlfriend and others had come out of the rental unit at that time and expressed surprise.

The tenant responded that the landlord’s agent was describing service of the landlord’s application and notice of hearing, which, he said, was the first time he became aware of any concerns by the landlord with respect to the tenancy. The tenant did not apply to dispute the 1 Month Notice.

The landlord did not provide a Proof of Service document for the 1 Month Notice. The 1 Month Notice itself is signed by the landlord’s agent and indicates that it was served on December 7, 2016 in person and the section with respect to service is signed by the

landlord. The agent was not able to explain why the landlord himself had signed in this section when it was she who had served the 1 Month Notice personally.

I conclude the tenant was not served with the 1 Month Notice. I prefer his testimony that he was not served and that the agent's memory as described above was of service of the landlord's application. This is consistent with the fact that the tenant has not applied to dispute the 1 Month Notice but has attended at this hearing. It was not clear that the 1 Month Notice was included with the landlord's application or notice of hearing. At the beginning of hearing I read the allegations of cause set out in the 1 Month Notice to the tenant.

As the landlord has not established service of the 1 Month Notice, the landlord's application is dismissed. The 1 Month Notice here at issue is cancelled and is of no force or effect.

The landlord is of course at liberty to issue a new notice to end tenancy in the event that it required.

Although I make no findings on the issue, I note that it is unlikely that the landlord would have been able to prove the cause alleged in the 1 Month Notice even if I had accepted that the tenant had been properly served with that notice. The cause alleged includes repeated late payment of rent, an unreasonable number of occupants in the unit, illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, and failure to pay a security or pet damage deposit within 30 days. However, the only documentary evidence submitted by the landlord was an illegible account ledger, and the landlord's agent has only been involved with the tenancy for a short time and did not appear to have the historical knowledge necessary to give relevant testimony.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The 1 Month Notice is cancelled and the tenancy continues until ended in accordance with the Act.

The landlord and its agents should be aware that there is legislation governing all tenancies in the Province and there are rules governing dispute resolution hearings, which they should become familiar with. Information is available on our website or by talking with an information officer

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 20, 2017

Residential Tenancy Branch