



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KARYN HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDC OLC RP PSF RR

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated February 13, 2017 (the “1 Month Notice”), for a monetary order for compensation, damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the rental unit, site or property, to provide services or facilities agreed upon but not provided, and for a rent reduction.

The tenant, a legal advocate for the tenant, two agents for the landlord, and the owner attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Agent S.L. (the “agent”) confirmed that the agents did not serve the tenant with any documentary evidence in response to the tenant’s application for dispute resolution. As a result, the landlords’ documentary evidence on file was not considered as it was not served in accordance with the Rules of Procedure. The agents confirmed that they had received and reviewed the tenant’s documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the agent requested to have the landlords’ application scheduled for a different date joined to the tenant’s application. The agent’s request was declined once the agent confirmed that the tenant had not been served with a landlord’s Application for Dispute Resolution. In addition, I note that the file number referenced by the agent on the cover page of this decision does not match the rental unit address or the parties in the matter before me in the Residential Tenancy Branch case management system.

Also at the outset of the hearing, and by the mutual agreement of the parties, the name of the landlord agent was removed from the tenant’s application leaving just the corporate landlord name as the only respondent.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated

several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 1 Month Notice. The agent confirmed that she was served with the tenant's amendment to include disputing the 1 Month Notice as this proceeding. Therefore, I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 1 Month Notice at this proceeding. The balance of the tenant's applications is **dismissed, with leave to re-apply**

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on February 1, 2016.

The parties agree that the 1 Month Notice was dated February 13, 2017. The tenant affirmed that he received the 1 Month Notice posted to his door on February 14, 2017 and applied to dispute it the same day.

In the 1 Month Notice, the landlord has alleged three causes. The first cause is that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The second cause 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 third cause is that the tenant has not done required repairs or damages to the unit/site. The 1 Month Notice has an effective vacancy date listed as March 31, 2017.

The agent confirmed that she did not submit any documentary evidence to support the three causes being alleged in the 1 Month Notice. The landlord also did not have any witnesses present during the hearing to provide witness testimony. The tenant denied all three causes and stated that he did not agree with the causes alleged on the 1 Month Notice.

Analysis

Based on the above the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice dated February 13, 2017 has an effective vacancy date of March 31, 2017. The tenant disputed the 1 Month Notice on February 14, 2017 which is within the ten day timeline provided for under section 47 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice and did not have any witnesses present at the teleconference hearing. Allegations without supporting evidence to support those allegations constitutes insufficient evidence to provide a 1 Month Notice is valid, especially when a tenant disputes all three causes listed on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted documentary evidence that supports at least one of the three causes listed in the 1 Month Notice, or have arranged for a witness to provide testimony that would support any of the three causes listed on the 1 Month Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find it was not necessary to hear further from the landlord agents as the landlord has provided insufficient evidence to prove that the 1 Month Notice is valid. Therefore, **I cancel** the 1 Month Notice dated February 13, 2017 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The tenant's application is successful.

The 1 Month Notice issued by the landlord dated February 13, 2017 is cancelled.

The tenancy shall continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: March 1, 2017

Residential Tenancy Branch