



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NJM HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice");

The landlord's agent (the "landlord") and the tenant appeared at the teleconference hearing and gave affirmed testimony. The tenant appeared with an advocate. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue to be Decided

- Is the tenant entitled to an Order to cancel the landlord's One Month Notice?

Background and Analysis

The undisputed evidence established that a month to month tenancy started on March 15, 2016. Rent in the amount of \$450.00 is payable on the 1st day of each month. The tenant provided a security deposit in the amount of \$225.00 on March 15, 2016.

The landlord issued a One Month Notice dated February 14, 2017 that required the tenant to move out on March 31, 2017. On February 14, 2017 the landlord served the tenant with a copy of the One Month Notice in person.

The landlord's reason for wanting to end the tenancy set out in the One Month Notice is breach of a material term of the tenancy agreement that was not corrected within a

reasonable time after written notice to do so. The complaint giving rise to the One Month Notice was that the tenant was smoking in his rental unit.

The landlord testified that the tenancy agreement had a no smoking clause that was a material term of the tenancy agreement. The landlord testified the tenant is smoking in the unit. The landlord testified that he cautioned the tenant about smoking in the unit through text messages. The landlord submitted copies of the texts which were of such poor quality that it was not possible to read them. The landlord read out the texts. The landlord acknowledged that he did not send the tenant a written notice other than the texts. The landlord acknowledged that he did not notify the tenant that smoking was a material breach of the tenancy.

Residential Tenancy Policy Guideline # 8 (the "Policy Guideline") explains that, to end a tenancy for breach of a material term, the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Based upon the landlord's testimony, I find that there is insufficient evidence that the landlord provided the tenant with adequate written notice to comply with the requirements set out in Policy Guideline #8. I find that the landlord did not inform the tenant that smoking in his unit is a breach of a material term of the tenancy. I also find that the texts were insufficient to meet the requirement of written notice set out in Policy Guideline #8 above. Therefore, I find that the landlord cannot rely upon breach of a material term of the tenancy agreement as cause to end the tenancy.

Based upon the foregoing, I find that the tenant is entitled to cancellation of the One Month Notice. Therefore, I cancel the One Month Notice and the tenancy will continue until such time as it ends in accordance with the *Act*.

The tenant is put on notice that he cannot smoke in the building or his rental unit.

Conclusion

The tenant's application is successful. I cancel the One Month Notice and the tenancy will continue until such time as it ends in accordance with the *Act*.

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: April 3, 2017

Residential Tenancy Branch