



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEE HOI BROS.CO.LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, LRE, FF

Introduction

This hearing was scheduled to consider the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord JS primarily spoke for both the individual and corporate landlord (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlords' 1 Month Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the Act, I find that the parties were duly served with copies of the landlords' 1 Month Notice, the tenant's application and their respective evidence.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Should the landlords be ordered to comply with the Act, regulation or tenancy agreement?

Should conditions be set suspending the landlords' right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This month-to-month tenancy originally began in October, 2014. The current monthly rent is \$1,015.00 payable on the first of each month. The rental unit is a suite inside an apartment building. There is an above ground parking area adjacent to the rental building where the tenant is assigned one stall.

There was a previous hearing regarding this tenancy under the file number on the first page. That hearing dealt with the landlords' 1 Month Notice to End Tenancy for cause dated December 28, 2016. The landlords alleged that the tenant was operating an Airbnb rental that contravened municipal bylaws. The earlier 1 Month Notice was cancelled based on an agreement between the parties that the tenant would comply with the bylaw and cease all Airbnb operations in the future.

The landlord testified that he believes that the tenant has resumed operating an Airbnb out of the rental unit and therefore is in breach of a material term of the tenancy agreement.

The landlord testified that there are indications that the tenant is operating an Airbnb out of the rental unit. The landlord said that the tenant's parking space is used by an assortment of cars with out of town license plates. The landlord's property manager testified that he has seen numerous individuals coming and going from the rental unit. The property manager said that he rarely sees the tenant occupying the rental unit and believes that he simply operates the unit as an Airbnb. He said that he has seen what appears to be a lockbox containing the building keys in the tenant's parking stall. He believes that the lockbox is a way in which the tenant provides his Airbnb clients access to the rental building.

The landlord said that he has spoken with several of the individuals who have been seen coming and going from the rental unit and has been told by them that the rental unit is an Airbnb. The landlords submitted into written evidence a written statement from a guest of the rental unit who said that they booked the rental unit as an Airbnb for a period of six days in March, 2017.

The tenant testified that he is not operating an Airbnb in the rental unit. He said that guests are personal acquaintances and that he is a permanent resident in the rental unit. The tenant testified that the landlords have harassed his guests by demanding they identify themselves and their reasons for being present in the rental building. The tenant complained that the landlords have come by to the rental unit asking to inspect its condition without further explanation. The tenant testified that he is not aware of any instances where the landlords have entered the rental unit without his permission. The tenant said that the landlords have provided 24-hours' notice when they require access to the rental unit.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlords must demonstrate that the tenant has breached a material term of the tenancy agreement by operating an Airbnb out of the rental unit.

I find, on a balance of probabilities, that the landlords have not established cause for ending this tenancy. I find the totality of the landlords' evidence to be insufficient to conclude that there has been a breach of a material term. While there may have been a number of vehicles parked in the space provided to the tenant I do not find sufficient evidence to conclude that the tenant was operating an Airbnb in contravention of the tenancy agreement. I find the landlords' testimony that guests stated that they were occupants of an Airbnb to be hearsay and place little weight on the evidence. Similarly, the written statement obtained from one of the guests does not provide a full name of the person making the statement and appears to be signed by someone with a different name. I place little weight on the one statement submitted into written evidence. While the absence of other witnesses or sworn statements is not conclusive I find it instructive. The landlord had the opportunity to provide into written evidence additional statements from neighbors, witnesses or the alleged guests. If the rental unit is being offered online as an Airbnb one would reasonably expect that a copy of an online posting could have been submitted in support of the landlords' position. The landlords provided little written evidence in support of their 1 Month Notice. I do not find that the landlords have provided sufficient evidence to demonstrate that the tenant has breached a material term of the tenancy to warrant ending the tenancy.

I do not find that the tenant has provided sufficient evidence in support of his application to set conditions on the landlord's right to enter the rental unit. The parties provided undisputed testimony that the landlords have not entered the rental unit without the tenant's permission. The tenant has not provided evidence that the landlords have not complied with the *Act*, regulation or tenancy agreement. While I understand the tenant's frustration with the landlords' level of scrutiny I find that the landlords have adequately balanced the tenant's right to privacy with their duty to safeguard the rental building. I find that asking questions of individuals in and around the rental building and periodic inspections carried out pursuant to the *Act* are within the scope of the landlords' duties. Under the circumstances I decline to issue an order but will reiterate that the tenancy is bound by the *Act* and its provisions.

As the tenant's application was partially successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As I have found that this tenancy will continue I find that the tenant may deduct the \$100.00 filing fee from the next months' rent due.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The portion of the tenant's application to set condition on the landlords' right to enter the rental unit and for the landlords to comply with the Act, regulation and tenancy agreement is dismissed.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is provided with these Orders in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 12, 2017

Residential Tenancy Branch