



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing was convened to deal with an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for an order cancelling a 1 Month Notice to End Tenancy for Cause dated April 3, 2017 (the “1 Month Notice”), an order that the landlord comply with the Act, Regulation or tenancy agreement, and recovery of the application filing fee.

The tenant attended the hearing on his own behalf. Counsel for the landlord also attended. Service of the tenant’s application and notice of hearing were not at issue.

At the outset of the hearing counsel for the landlord advised that the landlord wished to revoke the 1 Month Notice. The landlord had not filed any evidence in support of the “cause” alleged in the 1 Month Notice or in response to the tenant’s evidence and written submissions, and counsel for the landlord confirmed that the landlord recognized that he did not have cause to end the tenancy. Counsel further advised that a letter had been sent to the Residential Tenancy Branch (“RTB”) the day before the hearing with respect to the revocation. That letter was not before me as of the date of the hearing but has since been forwarded to me.

In response, the tenant advised that he did not consent to the landlord’s revocation of the 1 Month Notice, and that he was attending from hospital. This hospitalization had not been anticipated and the tenant testified that he had also written to the RTB the day before the hearing advising of the hospitalization and of his intention to seek an adjournment. Like the landlord’s letter, the tenant’s letter was not before me as of the date of the hearing. I have since received the tenant’s letter and supporting evidence of the tenant’s hospitalization.

Preliminary issue: request for adjournment

An adjournment was not necessary in light of the landlord's revocation of the 1 Month Notice. Rule 7.9 of the Rules of Procedure sets out some of the factors an arbitrator may consider with respect to an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

As only the tenant's application was before me, and as the landlord had withdrawn the 1 Month Notice, the matter could be resolved in the tenant's favour without the submissions of the tenant, and the tenant would therefore not be prejudiced if an adjournment were not granted. Additionally, the matter would be more quickly resolved by going forward with the tenant's application, which did not require substantive submissions by the tenant.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement?

Is the tenant entitled to recover the application filing fee from the landlord?

Background and Evidence

It was agreed that the tenancy began in 2006. Counsel for the landlord noted that the tenancy was originally between the tenant and another owner/landlord, and that it was transferred to a second owner/landlord before the current owner became the landlord. Monthly rent of \$754.00 is due on the first of the month and this is a month to month tenancy. A security deposit of \$300.00 was paid at the beginning of the tenancy and the tenant understands that the deposit is held by the current landlord. The tenant believes there was written tenancy agreement but he does not have it in his possession.

He is uncertain whether the current owner/landlord has a copy of the written tenancy agreement.

The 1 Month Notice indicates that the tenant has allowed an unreasonable number of occupants in the unit and has “significantly interfered with or unreasonably disturbed another occupant or the landlord.” It also indicates that the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, “adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.”

The tenant has filed evidence and written submissions responding to the landlord’s allegations. The landlord has not filed any evidence or written submissions. At the hearing the tenant stated that he believed the landlord wishes to evict him so that he can substantially raise the rent, and that he has been, or anticipates being, served with another notice to end tenancy.

Analysis

The landlord wishes to revoke the 1 Month Notice. The tenant has not consented to the revocation, and the landlord has not substantiated the allegations made. Accordingly, the tenant’s application is successful. The 1 Month Notice is cancelled and is of no force or effect.

Although I make no findings as to the landlord’s motivations and will not therefore make an order that the landlord comply with the Act, Regulation, or tenancy agreement, the landlord is reminded that a tenancy may be ended only in accordance with the Act.

The landlord is required to abide by the Act regardless of whether I order the landlord to comply with the Act.

Conclusion

The tenant’s application to cancel the 1 Month Notice is allowed. The landlord’s 1 Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

As the tenant’s application is successful, I grant the tenant the cost of the filing fee in the amount of \$100.00 pursuant to s. 72(1) of the Act and authorize the tenant to

withhold \$100.00 from his monthly rent on a one time basis in full satisfaction of the \$100.00 filing fee.

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: May 16, 2017

Residential Tenancy Branch