



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OPT FF

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (the "application") under the *Residential Tenancy Act* (the "Act"). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated July 27, 2017 (the "1 Month Notice") for an order of possession of the rental unit, and to recover the cost of the filing fee.

A tenant agent and an agent for the landlord attended the teleconference hearing. An opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenant agent testified that although he received the landlord's documentary evidence, he was unable to open the DVD evidence and as a result, the DVD evidence was excluded from the hearing. Other than the DVD evidence, there were no other issues raised with evidence.

Preliminary and Procedural Matter

As the tenant continues to occupy the rental unit, I find the tenant's request for an order of possession to be moot and have not considered that request further in this decision as the tenant continues to occupy the rental unit.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence. The parties agreed that a fixed-term tenancy began on February 1, 2013 and reverted to a month to month tenancy after February 1, 2014.

The tenant agent confirmed that the tenant received the 1 Month Notice on or about January 27, 2017 and applied to dispute the 1 Month Notice on July 31, 2017. The 1 Month Notice had an effective vacancy date of August 31, 2017. The tenant disputed the 1 Month Notice within the 10 day timeline provided for under section 47 of the *Act*. The landlord listed two reasons on the 1 Month Notice as follows:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. 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 landlord agent referred to three letters in support of the 1 Month Notice. The first letter was dated May 13, 2015, and the other two letters were dated June 27, 2017 and July 11, 2017 respectively. The two most recent letters state the following in part:

“RE: Behaviour: improper behaviour to Manager

It has been reported that you are behaving in a manner that is being disruptive to your namager, the rental agreement and building policy.

We have been informed that you have been behaving in a manner that is not acceptable, when addressing the Management of your building. We must all live in a spirit of harmony and co operation. Please ensure that this situation is remedied immediately. Failure to do so may result in the head office issuing a Notice to End the Tenancy without further warning to you.”

[Reproduced as written]

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice in accordance with section 47 of the *Act*, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

In the matter before me, the tenant applied to dispute the 1 Month Notice within the 10 day timeline provided for under section 47 of the *Act*. Therefore, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. First, I find the May 2015 letter is not relevant and too

old to consider relevant to a 1 Month Notice dated July 27, 2017 and I have not considered the May 2015 letter further as a result. Second, I find that both warning letters fail to specifically state what behaviour should be corrected and what the tenant did that should not be repeated to avoid eviction. In other words, I find both letters too vague and fail to support the two grounds listed on the 1 Month Notice as a result.

Given the above, I find the landlord has failed to meet the burden of proof to support the two reasons listed on the 1 Month Notice. Therefore, I **cancel** the 1 Month Notice dated July 27, 2017, due to insufficient evidence.

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

As the tenant's application is successful, I grant the tenant a monetary order pursuant to section 67 and 72 of the *Act* in the amount of **\$100.00** as full recovery of the cost of the filing fee under the *Act*.

Conclusion

The 1 Month Notice dated July 27, 2017 has been cancelled due to insufficient evidence from the landlord.

The tenancy has been ordered to continue until ended in accordance with the *Act*.

The tenant is granted a monetary order pursuant to section 67 and 72 of the *Act* in the amount of \$100.00 as full recovery of the cost of the filing fee under the *Act*. Should the landlord fail to deduct \$100.00 from the tenant's next month's rent in full satisfaction of this monetary order, the tenant must then serve the landlord with the monetary order which can then be enforced as an order of the Provincial Court (Small Claims Division).

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: October 20, 2017

Residential Tenancy Branch