



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*;

Both the tenant and the landlord's representative, A.C. (the "landlord") attended the hearing. A.C. stated that he had full authority to make decisions on behalf of the landlord. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenant explained that a copy of the landlord's 1 Month Notice to End Tenancy was provided to him in person on August 3, 2017. Pursuant to section 88 of the *Act*, the tenant is found to have been served with the landlord's 1 Month Notice.

The landlord acknowledged receipt of the tenant's Application for Dispute Resolution on August 8, 2017. Pursuant to section 89 of the *Act*, the landlord is found to have been served with the tenant's Application for Dispute Resolution.

Following opening remarks, the landlord questioned if his evidentiary package had been received by the *Residential Tenancy Branch*. He explained that it was faxed to the *Branch* at approximately 7:30 P.M., on October 11, 2017. *Residential Tenancy Rule of Procedure 3.14* states, "The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing." I find that the respondent landlord has failed to fulfil his duty under *Residential Tenancy Branch Rule of Procedure 3.17* as it was received by both the *Branch* and the applicant, the night prior to the hearing. This provided the applicant with little time to review the evidence, or prepare a response. I decline to allow this evidence at the hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, should an Order of Possession be issued for cause?

Background and Evidence

The tenant provided undisputed testimony that this tenancy began in May 2017. Rent is \$800.00 and a security deposit of \$400.00 collected at the outset of the tenancy, continues to be held by the landlord.

The landlord explained that he sought an Order of Possession based on cause. The 1 Month Notice to End Tenancy served on the tenant noted, "Tenant has allowed an unreasonable number of occupants in the unit/site." The landlord explained that the suite was to be occupied by one person but that the tenant had repeatedly allowed the same guest to stay there regularly. The landlord said that he was willing to accommodate this extra person, but the tenant would be forced to pay extra to have them stay there. The landlord could not identify exactly when the other person began to occupy the suite but noted they are there "frequently...approximately 5 to 7 days per week." Additionally, the landlord argued that an Order of Possession should be granted as there is a no dog rule allowed in the suite and the tenant's guest continues to bring two dogs to the unit when she visits.

The tenant said that he was unaware that only one person was permitted in the suite and noted that his guest would stay at the unit periodically, sometimes up to 3x per week. The tenant explained that he moved into the suite in June 2016 that he had been living with former occupant, R.L. He said that the landlord had permitted this and they had paid rent of \$750.00 per month, from June 2016 to May 2017, when occupant R.L. moved out. The tenant explained that following R.L.'s departure his rent was raised to \$800.00 for the same suite he was previously occupying with R.L. The landlord acknowledged that this arrangement had previously been in place but argued that this was a temporary exemption of the rules that was allowed because of occupant R.L.'s health issues.

During the course of the hearing, the tenant acknowledged that his guest attended to the house with her two dogs; however, he said that he was under the impression they were allowed as they were simply visiting, the landlord himself had a dog, and it was his understanding that they could visit the property but not live there.

Analysis

Section 47(1)(c) of the *Act* states, A landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit.

At the hearing the landlord provided oral testimony that the rental suite was to be occupied by one person, and that the tenant repeatedly had a guest in the unit who would stay between 5 and 7 days at a time.

The tenant acknowledged that he would have a guest in the unit, but explained that it was only up to 3x per week. Furthermore, he said that he was unaware that the suite was only to be occupied by 1 person as he had previously lived in the exact same suite with occupant R.L. for a period of one year.

I do not find that the tenant has an unreasonable number of occupants in the rental unit. No copy of the tenancy agreement was produced at the hearing to show how many people were allowed to occupy the unit. In addition, based on the testimony of the tenant, I find that the landlord had previously allowed the tenant to occupy the same suite with another occupant and do not find any evidence indicating that a change of this policy had taken place since occupant R.L.'s departure.

In addition to the complaint against an additional occupant, the landlord sought an Order of Possession for the dogs which are present in the suite. I do not find that a dog, or dogs to fall within the parameters of "an unreasonable number of occupants."

This tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's Notice to End Tenancy was successful. This tenancy shall continue until it is ended 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: October 16, 2017

Residential Tenancy Branch