



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 August 19, 2017 (the "1 Month Notice").

The tenant, the landlord and a witness for the tenant attended the teleconference hearing. The hearing process was explained to the parties and 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.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

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

Background and Evidence

Although neither party submitted a copy of the tenancy agreement or the 1 Month Notice, the parties did agree that the 1 Month Notice was dated August 19, 2017 and was disputed by the tenant on August 21, 2017 and listed the following 2 causes:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
2. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

Regarding cause #1, as no tenancy agreement was submitted in evidence this ground must fail as the landlord is unable to prove a material term exists without a written tenancy agreement as a material term must be agreed upon in writing between the parties at the start of the tenancy.

Regarding cause #2, the landlord testified that the photos submitted in evidence are his evidence that the tenant has put the property at significant risk. Some of the photos show soap scum in a bathtub, dust between appliances, close up photos of hardwood flooring, and dust on ventilation outlet covers. Other photos show outdoor patio furniture outside and other personal items.

The tenant completely disagrees with the causes listed in the 1 Month Notice.

Analysis

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

Once the tenant disputed the 1 Month Notice in accordance with the timeline set out in 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, and will have no force or effect.

I have carefully reviewed all photos and disagree that the photos support that the tenant has placed the property at significant risk. In fact, I find that none of the photos support that the tenant has put the property at significant risk.

In addition and as described above, the landlord failed to submit a copy of a written tenancy agreement which I find is required to prove the existence of a material term of the tenancy. As the landlord failed to meet the burden of proof on both grounds, I find that the landlord has provided insufficient evidence to support the two causes listed on the 1 Month Notice.

Given the above, **I cancel** the 1 Month Notice dated August 19, 2017 due to insufficient evidence by the landlord.

I ORDER the tenancy to continue until ended in accordance with the *Act*. The 1 Month Notice dated August 19, 2017 is of no force or effect.

Conclusion

The tenant's application is successful.

The 1 Month Notice dated August 19, 2017 has been cancelled and is of no force or effect. The tenancy continues until ended in accordance with the *Act*.

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 24, 2017

Residential Tenancy Branch