



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASK WELLNESS SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") as follows:

The tenant requested:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47.

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 landlords testified that they did not receive notice of this hearing or any documentary evidence. The tenant submitted documentary evidence including Canada Post tracking information that the landlords were served notice of this hearing by way of registered mail. The tenant has satisfied me that the landlords were deemed served notice of this hearing in accordance with Sections 89 and 90 of the Act. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice set aside? If not, are the landlords entitled to an Order of Possession?

Background and Evidence

The tenant's testimony is as follows. The month to month tenancy began on August 1, 2012, with monthly rent of \$600.00, payable on the first of each month. The landlords testified that on April 7, 2017 the tenant entered their office and was aggressive and abusive about his subsidized rent. The landlord testified that they requested some

information to which the tenant screamed profanities. The landlord testified that on May 31, 2017 the tenant was issued a warning letter about him being abusive and using foul language. On August 15, 2017 CD testified that she was assisting a new tenant move in when she was approached by the tenant. CD testified that the tenant stated that if anyone hit his vehicle he would assault her. CD testified that she was and still is very frightened of the tenant. CD testified that she's made all attempts to avoid him since that date. The landlords issued a One Month Notice to End Tenancy for Cause on August 16, 2017 with an effective date of September 30, 2017 on the grounds that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The landlords request an order of possession.

The tenant gave the following testimony. The tenant testified that he at no time used profanities or threatened anyone. The tenant testified that he did become irritated with the landlords in their office but it was as a result of them not providing clarification and justification for the information they were seeking. The tenant testified he did not receive any warning letters. The tenant testified that he did not threaten anyone and has made sure to avoid all tenants and staff since receiving the notice to end tenancy. The tenant testified that he will be moving in the summer of 2018 and would like to remain until then.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlords provided testimony that was adamantly disputed by the tenant. As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim.

When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Although the landlords testified that they became aware of this hearing "a few weeks ago", it is worth noting that they did not submit any documentation to support their position, i.e. the warning letter or other supporting documentation. The landlords testified that there have been no further incidents with the tenant since August 15, 2017. Based on the insufficient evidence before me, the landlords have not satisfied me that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, accordingly; I hereby set aside the One Month Notice to End Tenancy for Cause.

Conclusion

The One Month Notice to End Tenancy for Cause dated August 16, 2017 is set aside, it is of no force or effect. The tenancy continues.

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: November 20, 2017

Residential Tenancy Branch