



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Man Kei Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing was scheduled to convene by way of conference call concerning an amended application made by the tenants seeking orders to cancel a notice to end the tenancy for cause and a notice to end the tenancy for unpaid rent or utilities.

Both tenants attended the hearing and one tenant gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call. One of the tenants testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing on September 6, 2017, and with the Amendment to an Application for Dispute Resolution on November 6, 2017. In both instances, the tenants served the documents by handing them to a person at the landlord's office who signed documents acknowledging receipt. I accept that testimony, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that this month-to-month tenancy began on January 1, 2017 and the tenants still live in the rental unit. Rent in the amount of \$750.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$375.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a room in a hotel. The tenant testified that a copy of the tenancy agreement was provided to the Residential Tenancy Branch, but I have not received it.

The tenant also testified that the landlord served the tenants with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit sometime in August, 2017. A copy has been provided as evidence for this hearing and it is dated July, 2017 with no day, and contains an effective date of vacancy of September 30, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant;
 - jeopardize a lawful right or interest of another occupant or the landlord.

Other residents in the building have also received such a notice with identical reasons for issuing it.

The landlord also served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing and it is dated November 2, 2017 and contains an effective date of vacancy of November 11, 2017 for unpaid rent in the amount of \$375.00 that was due on November 1, 2017. The tenant testified that it was located on the door of the rental unit on November 2, 2017, and there are no rental arrears. Police have been notified of fraud.

The landlord has not served the tenants with an application for dispute resolution seeking to enforce either of the notices.

The tenant further testified that the landlord has not provided the tenants with a key or building fob to give the tenants access to the building, and at times refuses to press the buzzer to allow the tenants access.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, having heard nothing from the landlord, I am not satisfied that the landlord has established that either of the notices was given in accordance with the *Act*, and therefore, I cancel both notices.

The tenant also testified that the landlord refuses the tenants entry by refusing or failing to open the door of the building, and the tenants have no access other than by being "buzzed in" by another person. The *Residential Tenancy Act* specifies that:

- 30 (1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
 - (b) a person permitted on the residential property by that tenant.
- 31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.
- (1.1) A landlord must not change locks or other means of access to a rental unit unless
- (a) the tenant agrees to the change, and
 - (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

I find it prudent in the circumstances to order the landlord to comply with the *Act*.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated July, 2017 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2017 is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with Sections 30 and 31 of the Residential Tenancy Act as set out above by providing both tenants with keys or fobs that give access to the residential property and the rental unit forthwith. If the landlord fails to do so, the tenants will be at liberty to apply for monetary compensation for the landlord's failure to comply with the *Act* and this order.

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 28, 2017

Residential Tenancy Branch