



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 1 Month Notice to End Tenancy for Landlord's Use pursuant to section 47.

Both parties attended this hearing although the landlord did not join the teleconference hearing until 9:44 a.m. The conference was scheduled to start at 9.30 a.m. The tenant and his advocate were given an opportunity to provide evidence and make submissions with respect to the tenant's application. When the landlord joined the teleconference, he acknowledged receipt of the tenant's application and was given an opportunity to make submissions as well as provide any evidence to support his 1 Month Notice to End Tenancy for Landlord's Use ("1 Month Notice").

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession?

Background and Evidence

The evidence presented by the tenant was that this tenancy began approximately 3 years ago. His advocate testified that the tenant is supported by her organization and that they are responsible for a portion of his rent. The total rent, according to the tenant's advocate is \$800.00 payable each month and the tenant pays \$375.00 of this total amount. The tenant testified that the landlord holds a security deposit in the amount of approximately \$400.00 paid by the tenant.

The landlord issued a 1 Month Notice to End Tenancy on September 25, 2017 with the following grounds to end the tenancy;

- The tenant is repeatedly late paying rent; and
- The tenant put the landlord's property at risk by smoking cigarettes in the building and leaving a couch discarded on the landlord's property.

The tenant and his advocate deny the allegations raised by the landlord in his 1 Month Notice. The tenant's advocate also notes that the landlord did not sign the 1 Month Notice or complete the form in its entirety. Upon reflection on the 1 Month Notice issued on September 25, 2017, the landlord acknowledged that the hearing should not proceed on the basis of this 1 Month Notice because he had not submitted any documentary evidence to support the grounds of his 1 Month Notice or the service of the notice and did not wish to present any oral evidence. He agreed that the notice should be cancelled.

Analysis

When a tenant applies to cancel a Notice to End Tenancy, the burden shifts to the landlord to prove that the Notice to End Tenancy is justified and that the tenancy should end. In this case, the landlord conceded that he was unable to prove sufficiently the claims made in the 1 Month Notice and therefore was unable to show that the tenancy should end. Based on the agreement of the landlord that he is unable to rely on this notice to end tenancy, I grant the tenant's application to cancel the Notice to End Tenancy.

Conclusion

I grant the tenant's application to cancel the Notice to End Tenancy dated September 25, 2017. The tenancy shall continue.

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: December 22, 2017

Residential Tenancy Branch