



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, ERP, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package in person. The tenants claimed that the package was served on November 2, 2017. The landlord claims that the package was not served until November 14, 15 or the 16th. In any event the landlord clarified that he is able to proceed and is not aware of any issues that would prevent the hearing from proceeding. As such, I find that both parties have been sufficiently served as per section 90 of the Act.

Both parties confirmed that the amendment to the application for dispute was served to the landlord in person.

The tenants stated that the submitted documentary evidence was provided to the landlord along with the notice of hearing package. The landlord disputed this claim stating that he did not receive the 19 pages of hand written notes. The landlord did not submit any documentary evidence as he claims that he is busy working and did not

have time. For the purposes of this hearing, I find that the landlord is sufficiently served with the tenants' documentary evidence as I find that the tenant's documentary evidence is a handwritten account of their issues with the landlord and is not prejudicial to the landlord. Both parties were advised that each would be given an opportunity to address any of the documentary evidence if it became relevant. Neither party raised any further issues regarding the documentary evidence.

During the hearing it was clarified by the tenants that they did not receive an "actual" 10 Day Notice from the landlord, but instead a "letter of eviction". The landlord disputed this claim, but failed to provide sufficient evidence of an "actual" 10 Day Notice or that it was served upon the tenants. On this basis, the tenants' application to cancel a 10 Day Notice is dismissed with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?
Are the tenants entitled to an order for emergency repairs?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 25, 2017. The monthly rent was \$650.00 payable on the 1st day of each month.

Both parties confirmed that the landlord served the tenant with a 1 Month Notice dated November 3, 2017 setting out an effective end of tenancy date of December 30, 2017 by posting it to the rental unit door. Both parties confirmed that 3 reasons for cause were selected on the 1 Month Notice stating,

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- put the landlord's property at significant risk.

The landlord provided affirmed testimony that the tenant is repeatedly late paying rent since the tenancy began in August 2017. The tenants dispute these claims. The

landlord stated that the tenants were only on-time paying rent once on September 1, 2017.

The landlord provided affirmed testimony that the tenant has repeatedly disturbed other occupants and the landlord by having the police attend on multiple occasions due to excessive noise. The tenants dispute this claim.

The landlord provided affirmed testimony that the tenant's roommate has placed the property at significant risk due to his actions in tampering with the electrical systems of the dryer and heating system(s). The landlord claims that he had to have an electrician re-wire the electrical panel for safety concerns. The tenants dispute these claims.

The tenants claim that there is no heat provided by the landlord claiming that the heating system requires emergency repairs. The landlord disputes this claim stating that the heating system was inspected and repaired in September of 2017.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The onus or burden of proof lies with the party who is making the 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 their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord has provided claims of repeatedly late paying rent, significantly disturbing another occupant or the landlord and putting the landlord's property at risk. The tenants have emphatically disputed these claims. The landlord has failed to provide any supporting evidence as per his claims that he is busy working and did not have time. As such, I find that the landlord has failed to provide sufficient evidence to satisfy me of his claims for cause to end the tenancy. The tenants' application to cancel the 1 Month Notice dated November 3, 2017 is granted. The tenancy shall continue.

As for the tenants' claims for emergency repairs, I find on a balance of probabilities that the tenants have failed. The burden of proof applies to any party making a claim. In this case, the tenant has claimed that there is no heat and requires emergency repairs, but has provided supporting evidence to the issues of having no heat. The landlord has

emphatically disputed this claim stating that the heating system was inspected and repaired in September 2017. The tenant's request for emergency repairs is dismissed.

Conclusion

The tenants' application to cancel the 1 Month Notice dated November 3, 2017 is granted. The tenancy shall continue.

The tenants' application for emergency repairs is dismissed without leave to reapply.

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: January 22, 2018

Residential Tenancy Branch