



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated October 30, 2017 (“1 Month Notice”).

The tenant, the landlord, and a building manager for the landlord attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The landlord confirmed that they had the opportunity to review the documentary evidence from the tenant prior to the hearing and that the landlord did not submit documentary evidence in support of the 1 Month Notice.

Preliminary Matter

At the outset of the hearing, the parties agreed that the tenant had in error, omitted the unit number in the rental unit address. As a result, the unit number has been added to the rental unit address pursuant to section 64(3) of the *Act*.

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on September 1, 2017.

The parties agree that the 1 Month Notice was dated October 30, 2017. The tenant affirmed that he received the 1 Month Notice posted to his door on October 30, 2017 and applied to dispute the 1 Month Notice on November 4, 2017.

In the 1 Month Notice, the landlord has alleged one cause which is that the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to have jeopardized a lawful right or interest of another occupant or the landlord.

The agent confirmed that no documentary evidence was submitted in evidence as the landlord was unsure how to do so. During the hearing, the landlord was directed to the Notice of Hearing document which on page two clearly sets out the process for submitting evidence as the respondent. In addition, the landlord and building manager testified that regarding the alleged illegal activity listed on the 1 Month Notice, the police were called however the police did not attend or issue a police file number. The tenant disputes that any illegal activity has been committed.

Analysis

Based on the above the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of November 30, 2017. The tenant disputed the 1 Month Notice on November 4, 2017 which is within the ten day timeline provided for under section 47 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice and did not have any witnesses present at the teleconference hearing. Allegations without supporting evidence to support those allegations constitutes insufficient evidence to provide a 1 Month Notice is valid, especially when a tenant disputes the cause listed on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted documentary evidence that supports that illegal activity was committed by the tenant on the balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find the landlord has provided insufficient evidence to prove

that the 1 Month Notice is valid. Therefore, **I cancel** the 1 Month Notice dated October 30, 2017 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The tenant's application is successful.

The 1 Month Notice issued by the landlord dated October 30, 2017 is cancelled.

The tenancy shall continue 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: January 23, 2018

Residential Tenancy Branch