



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC CNR

Introduction

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

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

The tenant's application was filed within the time period required under the Act.

At the outset of the hearing, the landlord advised he was willing to set aside any 10 Notice's to End Tenancy as the tenant has paid the outstanding rent.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is a single room apartment. The tenancy began on July 2015.

The landlord served the tenant with the 1 Month Notice on November 2, 2017. The landlord issued the Notice on the grounds the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*
- *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- *put the landlord's property at significant risk;*

The landlord submits a signed complaint letter from another tenant regarding the tenant sexually harassing her and offering drugs to her. The landlord submitted various written notices issued to the tenant in regards to complaints of the tenant smoking in the rental unit and a parking incident in which the tenant was verbally abusive towards a manager of the building. The landlord submits the tenant continues to lie about smoking in the building and he himself has seen the tenant smoking and smelled it on him.

Under cross-examination, the landlord acknowledged himself writing the complaint letter which was then signed by the witnessing tenant. He asked the tenant if the statement was accurate and she signed it.

The tenant testified that he has lived in the building for over 2 years and he quit smoking 9 months ago. The tenant disputed sexually harassing another tenant or verbally abusing a manager.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

The landlord's main argument was that over the course of the tenancy the tenant has continually lied about smoking in the rental unit. The landlord failed to submit a tenancy agreement or establish how smoking was a material breach of the tenancy agreement nor did the landlord issue the 1 Month Notice on this ground. The landlord has failed to establish how the tenant allegedly smoking in the rental unit constituted either of the grounds listed in the Notice. Further, the landlord did not present any of the witnesses of the alleged sexual harassment or verbal abuse to testify in the hearing. The tenant denied all of these allegations.

Accordingly, I find the landlord presented insufficient evidence to justify cause to end the tenancy on either of the grounds listed in the 1 Month Notice.

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, dated November 2, 2017, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 31, 2018

Residential Tenancy Branch