



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP

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 Cause (the 1 Month Notice) pursuant to section 47; and
- an order that the landlord make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present I confirmed service of the tenant's application for dispute resolution and evidence on the landlord and the landlord's service of their evidence on the tenant. The parties confirmed receipt of the respective materials. I find that the parties were served with the tenant's application and respective evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to make repairs to the rental unit?

Background and Evidence

This month-to-month tenancy began approximately 18 years ago. The rental unit is a cabin. The tenant currently pays monthly rent in the amount of \$225.00.

The tenant said that the primary source of heat for the cabin was an oil burning stove when he first moved in. He said that he subsequently removed the stove with the knowledge and consent of the landlord's son who was acting as agent. He said that he installed a wood burning stove about 2 years ago. The tenant said that he has been informed that the wood stove is not properly certified and must be replaced with a certified stove. The tenant seeks an order that the landlord install a certified replacement stove or pay for its purchase.

The landlord testified that she was unaware that the tenant removed the original oil burning stove or that it was replaced by a wood burning stove. The landlord said that she was informed by her insurer that the rental unit could not be insured in its present condition.

While the parties testified that a 1 Month Notice was issued, neither party submitted a copy of the 1 Month Notice into written evidence.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. When a tenant files an application to dispute a 1 Month Notice, the onus shifts onto the landlord to show on a balance of probabilities that there is cause for the tenancy to end.

While the parties testified that the tenant was served with a 1 Month Notice, neither party provided testimony about when the supposed Notice was served, the manner in which it was served or any other information about the 1 Month Notice. Neither party submitted a copy of the 1 Month Notice into written evidence.

I find, on a balance of probabilities, that the landlord has not established sufficient cause for ending this tenancy. Neither party submitted the 1 Month Notice or the tenancy agreement into written evidence. There is insufficient evidence to conclude that a proper 1 Month Notice, conforming with the form and content requirements of section 52 was issued. I find that the landlord has not provided sufficient evidence to show that there is cause to end this tenancy. Accordingly, I allow the tenant's application to cancel the 1 Month Notice.

I find that the tenant has not provided sufficient evidence in support of his application for an order that the landlord make emergency repairs. The tenant gave vague testimony

about the heating system, accompanied by a photo of what is presumed to be the rental unit. The tenant gave evidence that he replaced the original oil burning heating system with a wood burning stove. The parties alluded to the wood stove being uncertified but provided little additional information in support. I find that there is insufficient evidence to show that the primary heating system of the rental unit requires repair. Accordingly, this portion of the tenant's application is dismissed.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. This tenancy will continue until ended in accordance with the Act.

The balance of the tenant's application 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 2, 2018

Residential Tenancy Branch