



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 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.

ML ("landlord") appeared as agent for the landlord, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant confirmed receipt of the landlord's 1 Month Notice dated November 23, 2017, on November 24, 2017, with an effective date of December 31, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue – Landlord's Evidence

The tenant testified in the hearing that he did not receive the landlord's evidence package until February 16, 2018. The landlord responded that the evidence package was personally served to the tenant on the same date it was submitted to the RTB, on February 9, 2018. The landlord called two witnesses in the hearing to confirm service of the evidence package upon the tenant on February 9, 2018.

The tenant requested that the evidence be excluded as both he and his advocate did not have time to review the evidence package. The tenant testified that it was a female, who did not match the description of the two witnesses, who served him the package on Friday, February 16, 2018. The tenant testified that the evidence package was served to

him by someone he deals with regularly, but he was unable to confirm her name. He provided a physical description of this person.

The landlord testified that according to the log of scheduled employees, the description of the person provided by the tenant does not work Fridays. The tenant then admitted that he may have been mistaken about the actual date of service, which may have fallen on a Thursday, and not a Friday.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was February 11, 2018.

Although the tenant disputes that he was served the evidence within the prescribed timeline in accordance with rule 3.15, the tenant was unable to confirm the actual date of service. I find that the tenant's story had changed once the landlord confirmed the employee the tenant described does not work Fridays. I accept the landlord's sworn witness testimony as proof of service that the tenant was indeed served on February 9, 2018. On this basis I find that the landlord's evidence was served within the timelines prescribed by rule 3.15 of the Rules. I indicated to both parties that the landlord's evidence would be admitted for the hearing.

The tenant indicated in the hearing that they wished to proceed with the hearing, and to assist the tenant and his advocate, the landlord's evidence was summarized for the tenant and his advocate. The tenant and his advocate were allowed to clarify and ask questions during the hearing related to any of the written evidence submitted by the landlord.

Issues

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

Background and Evidence

This month-to-month tenancy began on November 15, 2017, with monthly rent set at \$375.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of \$187.50. The tenant continues to reside in the rental suite.

The tenant disputes the reasons provided on the landlord's 1 Month Notice which stated that the:

- 1) "tenant or a person permitted on the property by the tenant has: "seriously jeopardized the health or safety or lawful right of another occupant or the landlord";
- 2) "tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant".

The landlord testified in the hearing that the 1 Month Notice was issued following an incident on November 19, 2017 when a visitor to the building was stabbed. The landlord submitted that this stabbing took place in the tenant's unit, which violated the crime-free housing and "behavioural contract" signed by the tenant on November 17, 2017. This "behavioural contract" is a document signed as part of the tenancy agreement, which was submitted in evidence, and signed by both the tenant and the landlord related to the conditions of the tenancy.

The tenant does not dispute that a stabbing took place on November 19, 2017, but he testified that the incident involved self-inflicted wounds by a person who was "on a suicide trip" inside his unit. The landlord sent a warning letter to the tenant on November 20, 2017 requesting a meeting with the tenant to discuss the incident on November 21, 2017. Both parties attended the meeting, when the tenant was asked what took place. The landlord's witness attended the hearing testifying that she spoke to the tenant in this meeting, and that the tenant stated to her that the person who was stabbed was "having a bad trip", and then changed his story stating that the person entered the unit already injured. The 1 Month Notice was issued to the tenant on November 23, 2017 as the landlord was concerned by the incident and the tenant's response.

The landlord confirmed in the hearing that the tenant has not engaged in similar behaviour since this incident and warning took place. The landlord also testified that they were unable to confirm that the tenant was the person who stabbed the other party, and they testified that the stabbing victim was not cooperative with the landlord, staff, or police. The landlord was unable to confirm that any criminal charges have been laid arising out of this incident.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The landlord personally served the tenant with the 1 Month Notice on November 24, 2017. The tenant filed for dispute resolution on December 4, 2017. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

The landlord provided two reasons on the 1 Month Notice why this tenancy should end. The tenant disputed that he had engaged in any illegal activity, or that he was involved with the stabbing incident on November 19, 2017. The tenant testified that although the stabbing took place inside his unit, he did not engage in any behaviour that justified the ending of this tenancy on the grounds that the landlord provided in the 1 Month Notice

I find that the landlord did not provide sufficient evidence to support that the tenant had engaged in any illegal activity, and accordingly I cannot grant an Order of Possession on that basis.

While the landlord was able to provide evidence that a violent incident may have taken place, the landlord did not provide sufficient evidence to support that the tenant had engaged in any behaviour that has "seriously jeopardized the health or safety or lawful right of another occupant or the landlord". Although it was undisputed that some sort of incident took place of a serious nature that resulted in an unregistered guest being stabbed, no party or witnesses were able to confirm who actually was involved in stabbing the victim. Although the tenant may not have been able to provide a clear explanation as to what had occurred on November 19, 2017, I find the landlord was unable to establish that the tenant engaged in behaviour of a serious enough nature to justify ending this tenancy. I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice of November 23, 2017 is of no force or effect. This tenancy continues until 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: February 19, 2018

Residential Tenancy Branch