



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act"). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated November 22, 2017 ("1 Month Notice").

The tenant, the landlord and a support person for the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence. As a result, I find the parties were sufficiently served according to the *Act*.

Preliminary and Procedural Matter

The landlord provided their email address at the outset of the hearing which was confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to the landlord and that the tenant would have the decision sent to them by regular mail.

Issue to be Decided

- Should the 1 Month Notice be set aside?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 1, 2017 and the monthly rent is \$525.00 per month and is due on the first day of each month. The parties agreed that the tenancy agreement addendum indicates that the tenancy is a single occupancy tenancy.

On November 22, 2017, the tenant confirmed receiving the 1 Month Notice with an effective vacancy date of December 31, 2017. The 1 Month Notice was dated November 22, 2017. The tenant disputed the 1 Month Notice on November 27, 2017 which is within the 10 day timeline provided under section 47 of the *Act*. The landlord listed one cause on the 1 Month Notice which is:

1. Tenant has allowed an unreasonable number of occupants in the unit.

The landlord admitted that up to the point of issuing the 1 Month Notice she did not keep a written record or keep track of the number of occupants in the rental unit and has only kept records since issuing the 1 Month Notice.

The landlord testified that between November 28, 2017 and February 4, 2018 the tenant's son has stayed over nine times overnight and that her boyfriend has stayed overnight 4 consecutive days in December and 4 consecutive days in January. The tenant denies that she has seen her boyfriend since December and denies that he stayed over 4 consecutive nights in December and has not been over in January as she has not seen him since December.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Firstly, I find the landlord failed to keep records to support the ground listed when the 1 Month Notice was issued on November 22, 2017 and admitted to only keeping records since issuing the 1 Month Notice.

Secondly, even if I accept the landlord's version of events, I do not find the number of days described for a guest to stay overnight to be unreasonable. In addition, even with a

single occupancy tenancy, the tenant has the right to have guests. Therefore, I find the landlord has failed to meet the burden of proof to support the one cause listed on the 1 Month Notice. Therefore, I **set aside** the 1 Month Notice as I find that it is not valid due to insufficient evidence presented by the landlord.

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

Conclusion

The 1 Month Notice is set aside due to insufficient evidence from the landlord as the landlord has the onus of proof.

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: February 7, 2018

Residential Tenancy Branch