



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 ("1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, present their sworn testimony, and make submissions. The landlord's mother (hereinafter referred to as "the landlord's representative") attended on behalf of the landlord stating that she had authority to represent the landlord at this hearing.

Preliminary Issue: Service and Receipt of Documents

The landlord's representative confirmed receipt of the tenant's Application for Dispute Resolution and the tenant's evidence materials however the landlord's representative argued that it was only received 'a few days ago'. She was unable to specify when she or the landlord received the package. The Canada Post registered mail receipts submitted by the tenant indicate that the package was sent to the landlord on January 24, 2018 at the address provided on the residential tenancy agreement.

The landlord's representative also submitted that the tenant sent the registered mail package to the wrong address. She testified that the landlord had moved however the landlord did not advise the tenant of a new address (other than the one available on the tenancy agreement). Since the landlord's representative did not supply documentary evidence or any specific dates or details, I find that the landlord was deemed served with the tenant's Application for Dispute Resolution and evidentiary materials, in accordance with section 89 and 90 of the Act, as of January 29, 2018 (5 days after its registered mailing to the landlord's address as provided on the tenant's tenancy agreement).

At this hearing, the landlord's representative confirmed that the landlord had not submitted documentary evidence for this hearing.

Preliminary Issue: More Time to Apply

The tenant requested more time to make his application pursuant to section 66 of the Act. He testified that the landlord issued the notice to end his tenancy three days after Christmas and the same day that he received difficult news about his health. As well, he noted that there were three days during the time period he had to apply where all offices were closed.

Section 66 of the Act provides that an arbitrator **may extend a time limit only in exceptional circumstances**. The tenant has indicated that the difficult circumstances of this period in his life meant that he was delayed in making his application. I find that this explanation does not amount to exceptional circumstances to justify extending the 10 day time limit for the tenant to apply to cancel the landlord's 1 Month Notice to End Tenancy for Cause. I make this finding in careful consideration of all of the testimony provided by the tenant and note that the tenant did not submit sufficient evidence to support his application for more time to apply. Therefore, I must decline to extend the time limit for the tenant to make his application.

As the tenant did not apply in time to cancel the landlord's Notice to End Tenancy, I dismiss the tenant's application to cancel the Notice without leave to reapply.

When a tenant makes an application to cancel a notice to end tenancy and that application is dismissed, section 55 of the Act applies:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

... (3) The director may grant an order of possession before or after the

date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

To address whether the requirements of section 55(1)(a) and section 55(1)(b), I will provide a brief analysis of the landlord's 1 Month Notice and evidence to support the Notice below.

Background and Evidence

The landlord did not submit any documentary evidence for this hearing. The landlord's representative testified that the 1 Month Notice to End Tenancy issued to the tenant was based on four grounds including the tenant's repeated late payment of rent as well as the tenant allows an unreasonable number of occupants in the rental unit. Based on the documentary submissions of the tenant in his application, particularly a copy of the landlord's 1 Month Notice issued to the tenant, the landlord relied on the following grounds only,

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

While the landlord ticked a box to indicate an intent to rely on another ground (that the tenant has engaged in illegal activity that has had some negative impact on the residential premises, landlord or other occupants), the landlord did not chose to complete the form to indicate which consequence arose out of the tenant's alleged illegal activity.

The comment section of the landlord's 1 Month Notice to End Tenancy provided a difficult to read list of issues arising out of this tenancy including fights by the tenant at the premises, junk in his residence and on the residential premises common areas, and that the police attended the rental premises several times.

Analysis

The landlord did not submit any documentary evidence in support of this claim. The landlord relied partially on the ground that the tenant is engaged in illegal activity however the landlord did not submit any documentation or provide any undisputed

evidence that met her burden to demonstrate what law the tenant has broken and how it has affected the building. With respect to the ground of illegal activity, the landlord did not submit sufficient evidence (in the form of copies of any warning letters to demonstrate that the landlords were providing the tenant with notice that his behaviour would result in an end to his tenancy) or articulate any undisputed evidence regarding the allegations of illegal activity. As the landlord failed to particularize this ground (illegal activity) to end the tenancy and failed to provide sufficient supportive evidence at this hearing, I find that the landlord cannot rely on this ground to end the tenancy.

At this hearing, the landlord did not have evidence before her to allow her to provide sufficient particularization of the allegations regarding the tenant's interference, disturbance of other tenants or the landlord or of the allegations regarding the tenant's impact on the safety or health of the other tenants or the landlord. A landlord has a burden, on a balance of probabilities to prove the allegations contained within a notice to end tenancy.

The landlord did not submit documentary evidence: any letters of complaint from other residents or any police reports. The landlord did not submit copies of complaints from other neighbours or any first-hand information regarding this tenancy. While the landlord issued a 1 Month Notice in accordance with the provisions of the Act by correctly filling out the form and serving it to the tenant in compliance with the requirements of the Residential Tenancy Act, the landlord did not provide sufficient evidence to allow me to determine that this notice was issued for a valid cause.

At this hearing, the landlord was given an extensive opportunity to provide the details of the allegations for each ground to end tenancy upon which the notice had been issued. However, her answers were very difficult to follow and she stated several times during the hearing that she was not responsible to provide evidence. The landlord expressed a great deal of frustration in dealing with the tenant at the residential premises. The landlord did not have materials to refer to (a copy of the notice to end tenancy, any record of dates or other materials related to this tenancy) during the hearing

The landlord alleged that the tenant;

- assaulted in elderly person on the residential premises;
- brings homeless and dangerous people into the building;
- runs an electricity cord from the laundry room to his unit;
- has a "truckload" of stolen property in his unit; and
- has been warned about his actions several times.

The tenant disputed all of the testimony by the landlord.

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy.

However, I decline to issue an Order of Possession to the landlord due to a lack of sufficient evidence.

Therefore, the tenancy will continue 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: March 26, 2018

Residential Tenancy Branch