



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

Both parties and witnesses attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated March 24, 2018 to be effective April 30, 2018 and the tenant confirmed it was served personally. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated March 26, 2018 on the owner and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 3, 2003, rent is \$575 a month and a security deposit of \$225 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant does not want to park in his assigned spot.

The landlord explained that the tenant consistently parks on the street outside the building. He has parked in the loading spot on occasion. The building has 6 visitor parking spots and also assigned tenant parking. The tenant's assigned spot is close to his unit so there is no reason for him to park on the street. If all the tenants parked on the street, there would be no room for others to park. Since the tenant's actions, two other tenants have started to park on the street also. The landlord contends that the tenant's parking habits are significantly interfering with and unreasonably disturbing the peaceful enjoyment of others and they wish to end the tenancy. They provided some photographs in evidence.

One witness from a different building said he saw the tenant park in the loading area in his building and he heard loud arguing between him and the managers. All parties agree that the Police or Bylaw Officers have not been involved and the street has not been marked as a No Parking zone.

The tenant said it is a public street and the managers have no authority to forbid him to park there. The managers said the relationship with the tenant has been reasonably good but it has deteriorated lately over the parking issue. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

While I find the evidence of the landlord credible that the tenant is parking on the public street and the tenant does not deny this, I find insufficient evidence that this is good cause pursuant to section 47 to end the tenancy. There is no provision in the tenant's lease requiring him to park in his assigned spot and no municipal or police authority has forbidden the tenants to park on the street by the building. Therefore I set aside the Notice to End Tenancy dated March 24, 2018. The tenancy is continued.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy dated March 24, 2018 is successful. The Notice is cancelled and the tenancy continues. The filing fee was waived.

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: April 19, 2018

Residential Tenancy Branch