



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS N/A
and [tenant name suppressed to protect privacy]

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.

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. The tenant primarily spoke on his own behalf with the assistance of his advocate. The corporate landlord was represented by its agent GA (the "landlord").

As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of the landlord's 1 Month Notice on or about March 12, 2018 and their evidence. The landlord confirmed receipt of the tenant's application for dispute resolution on or about March 21, 2018 and the tenant's evidence. Based on the undisputed evidence I find that the parties were each served with the respective materials 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?

Background and Evidence

This periodic tenancy began in October, 2003. The current monthly rent is approximately \$950.00.

The landlord provided testimony regarding various aspects of the tenancy. The landlord said that they have received noise complaints regarding the tenant's behaviour and other tenants have moved out from the rental building. They mentioned that the tenant smokes in their suite though they confirmed that smoking is not prohibited in the tenancy agreement. The landlord also raised issues they take with the condition of the rental unit. The landlord said that they issued the current 1 Month Notice as they feel the tenancy ought to end.

The landlord's witness provided testimony regarding past issues with the level of noise from the tenant's suite. The witness mentioned loud voices and profanity as well as slamming doors and cupboards. The witness said that since bringing the issue to the attention of the tenant in March, 2018 the noise level has decreased.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant, has caused serious jeopardy to the health or safety of the landlord or others, or that they have breached a material term of the tenancy.

I accept the evidence of the parties that the 1 Month Notice was served on the tenant by posting on the rental unit door on March 12, 2018 and the tenant filed their application for dispute resolution on March 21, 2018. As such I find that the tenant filed their application within the ten days provided under the *Act*.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. The landlord made some submissions about the tenant's behaviour but I find that there is insufficient evidence that the conduct warrants ending this tenancy. The landlord did not articulate what material term of the tenancy was breached and confirmed that smoking is not prohibited under the tenancy agreement.

The landlord referenced incidents which occurred almost a decade ago which were resolved at that time. The landlord's witness confirmed that the tenant has taken steps to decrease the noise level and there has been a marked improvement since March, 2018.

The landlord focused much of their testimony on the condition of the rental unit, saying that it requires considerable cleaning, renovation and repairs. I find that the landlord's testimony regarding the wear and tear on the rental unit to be insufficient to conclude that the tenant has significantly interfered with other occupants or has caused serious jeopardy to health and safety of others. The landlord stated in their own testimony and written submissions that they served the present 1 Month Notice without expectation that they would be issued an Order of Possession.

I do not find that the landlord has provided sufficient evidence to meet the burden of proof that the tenant's actions have given rise to cause to end this tenancy at this time. Consequently, I dismiss the landlord's 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing 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: June 5, 2018

Residential Tenancy Branch