



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord was also accompanied by an interpreter who was affirmed to well and truly interpret the proceedings from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of his ability.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that either of the One Month Notices to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act* or the tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$600.00 per month is payable on the 1st day of each month, and rent for this month has not yet been paid. At the outset

of the tenancy the landlord collected a security deposit from the tenant in the amount of \$300.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a room within a house that also has 3 other rooms tenanted and the landlord's husband resides in the lower level. The landlord's husband and the tenants do not share kitchen or bathroom facilities. A copy of 1 of 6 pages of the tenancy agreement has been provided as evidence for this hearing.

The landlord also testified that the tenant was served with 2 One Month Notices to End Tenancy for Cause, copies of which have also been provided for this hearing by the tenant. The first is dated April 4, 2018 and contains an effective date of vacancy of May 4, 2018. The landlord testified that it was personally served on the tenant. The second is dated April 21, 2018 and contains an effective date of vacancy of May 30, 2018, and was served by the landlord's son by posting it to the door of the rental unit on April 21, 2018. The second page of both notices has no markings, and no reasons set out for issuing the Notices.

The landlord testified that the tenant keeps his computer on too loud and keeps the landlord's husband awake. They got into an argument about the noise.

The landlord further testified that it's a month-to-month tenancy, and the landlord wants the tenant to move out because of the noise, but the tenant told the landlord that the landlord had to serve the tenant a notice to end the tenancy, so it was served.

The tenant testified that the tenant does not share kitchen or bathroom with the owner of the rental home.

The tenancy agreement is a month-to-month, but indicates: "for 6 months" which meant that in 6 months the parties would talk to see if the tenant wanted to stay or move. That was the verbal conversation between the parties when the tenancy agreement was signed.

The tenant further testified that rent is paid each month without any issues, and the landlord writes a receipt, but this month, the landlord used her language barrier to refuse rent.

The first notice to end the tenancy was given after the landlord said the term of the tenancy agreement had expired and the tenant had to move out. The tenant told the landlord that a notice to end the tenancy had to be served.

Then the landlord gave the second Notice with no reasons for issuing it on page 2. The landlord's son told the tenant it was issued because the tenant's name was incorrectly placed on the first one.

With respect to noise, one night at about 1:00 a.m. the tenant was playing video games on his computer with headphones plugged in. The landlord's husband arrived kicking the door and screaming in his Native language in the tenant's face. The next day, the landlord's husband screamed at the tenant again, "Noise!" It only happened once.

With respect to the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement, the tenant seeks an order that the landlord not issue a notice to end the tenancy just because it's a month-to-month tenancy. The landlord wants to change rooms rented in the rental home to Air BNB rentals for the summer and told the tenant he could move back in after summer. Two people have already moved out because they didn't want to fight it.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. The only reasons for issuing a One Month Notice to End Tenancy for Cause are listed on page 2 of the approved form.

I have reviewed both Notices given by the landlord, and I find they are both in the approved form, but neither of them set out which reason(s) apply to this tenancy. It does not suffice to allege noise at a hearing and not specify which of the reasons in the form or the *Residential Tenancy Act* apply. Further, a noisy tenant on a single incident is not sufficient cause to end a tenancy. Therefore, I cancel both Notices and the tenancy continues.

I further order that the tenancy is currently on a month-to-month basis and neither party can end the tenancy except as provided by the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated April 4, 2018 is hereby cancelled.

The One Month Notice to End Tenancy for Cause dated April 21, 2018 is hereby cancelled and the tenancy continues.

I further order that the tenancy is currently on a month-to-month basis and neither party can end the tenancy except as provided by the *Residential Tenancy 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 13, 2018

Residential Tenancy Branch