



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for an Order requirement the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement and for more time to apply to set aside that Notice to End Tenancy.

The Tenant stated that on September 17, 2018 the Dispute Resolution package and a copy of the Notice to End Tenancy were personally served to the building manager. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*; however the Landlord did not appear at the hearing. As the hearing documents have been properly served to the Landlord, the hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, and, if so, should that Notice be set aside?

Background and Evidence

The Tenant stated that on August 30, 2018 a One Month Notice to End Tenancy for Cause was personally served to her, which declared that she must vacate the rental unit by October 01, 2018. The Notice to End Tenancy, which was submitted in evidence, declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has damaged the landlord's property; has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and has jeopardized a lawful right or interest of another occupant or the landlord.

The Tenant stated that on September 05, 2018 she approached an agency that provides free legal aid and other support to individuals in need but she was unable to meet with a representative from that agency until September 11, 2018. She stated that on September 11, 2018 a representative of that agency helped her file this Application for Dispute Resolution.

In the details of the One Month Notice to End Tenancy for Cause the Landlord declared that this tenancy was ending because on August 23, 2018 a fire extinguisher was stolen from the hallway and was discharged into the unit.

The Tenant stated that she was not home when the fire extinguisher was discharged in the residential complex; when she arrived home she observed white powder from a fire extinguisher on her front door; some of the powder entered her rental unit through the edges of the door; she does not know who stole the fire extinguisher; and she does not know who discharged the fire extinguisher.

Analysis

Section 47(1)(e) of the Act authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

On the basis of the undisputed evidence I find that the Tenant received the One Month Notice to End Tenancy for Cause that is the subject of these proceedings on August 30, 2018, which declares the Landlord is attempting to end the tenancy pursuant to section 47(1)(e) of the Act. On the basis of the undisputed evidence I find that the Tenant did not file an application to dispute that Notice until September 11, 2018, which is one day after the deadline imposed by section 47(4) of the Act.

Section 66(1) of the Act authorizes me to extend the time limit for applying to cancel a Notice to End Tenancy in exceptional circumstances.

On the basis of the undisputed evidence I find that the Tenant sought assistance from an agency that provides free legal aid and other support to individuals in need within five days of receiving the Notice but she was unable to meet with a representative from

that agency until September 11, 2018. I find that in these circumstances the deadline for applying to cancel this Notice to End Tenancy should be extended to September 11, 2018. In reaching this conclusion I was heavily influenced by the evidence that shows the Tenant was actively seeking assistance with this matter and that the delay in filing her application was directly related to the organization's inability to assist her in a timelier manner.

I find that the Landlord submitted insufficient evidence to establish that the Tenant or a guest of the Tenant stole a fire extinguisher from the residential complex or that the Tenant or a guest of the Tenant discharged that fire extinguisher in the complex. In reaching this conclusion I was influenced by the Tenant's testimony that she did not steal/discharge the fire extinguisher and she does not know who stole/discharged the fire extinguisher. In reaching this conclusion I was further influenced by the absence of evidence that suggests the fire extinguisher was stolen/discharged by the Tenant or her guest.

As the Landlord has submitted insufficient evidence that the Landlord has grounds to end this tenancy pursuant to section 47(1)(e) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause that is dated August 30, 2018.

Conclusion

The One Month Notice to End Tenancy for Cause, dated August 30, 2018, is set aside.

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: October 25, 2018

Residential Tenancy Branch