



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 One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*.

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's assistant S.B., who is also an occupant of the rental unit, primarily spoke on behalf of the tenant during the hearing.

As both parties were present, service of documents was confirmed. The tenants testified that they served the landlord with the Notice of Dispute Resolution Proceeding package for this hearing in person around mid-August 2018, which was confirmed by the landlord. Based on the undisputed testimonies of the parties, I find that the landlord was served with notice of this hearing in accordance with section 89 of the *Act*.

The landlord confirmed that he did not serve any evidence on the tenant, nor did he upload any evidence to the dispute website. The tenant confirmed that she did not serve her written submission, which was uploaded as evidence to the dispute website, on the landlord. Therefore, I advised both parties that I would not consider the tenant's written submission as evidence, however, the tenant was permitted to provide verbal testimony during the hearing in relation to her written submission.

Preliminary Issue – Amendment to the Tenant's Application for Dispute Resolution

At the outset of the hearing, it was confirmed by both parties that the tenant L.K. is the only named tenant on the tenancy agreement and that the tenant's assistant S.B. resides in the rental unit as an occupant with the tenant. As such, pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's application to correct that only tenant L.K. be listed as the named tenant in this matter.

Preliminary Issue - Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into evidence by either party, therefore, the parties confirmed the following terms of the tenancy agreement:

- This month-to-month tenancy began approximately in 2014, although at that time the tenant resided in another unit in the rental property. The tenant moved to the current rental unit which is the subject of this dispute in February 2018.

- Monthly rent of \$1,000.00 is payable on the first of the month.
- The tenant paid a security deposit of \$350.00 at the beginning of the original tenancy in 2014. The landlord confirmed that he continues to hold the security deposit.

The tenant's rental unit is a two-bedroom apartment, which includes an unfinished walk-out basement, and is located on the ground level of a residential apartment complex. The landlord estimated the rental unit to be approximately 1,000 square feet in size.

The tenant confirmed that the landlord served them in person on July 30, 2018 with the One Month Notice dated July 30, 2018.

The tenant submitted a copy of the landlord's One Month Notice into evidence, which states an effective move-out date of August 31, 2018, with the following box checked off as the reason for seeking an end to this tenancy:

Tenant has allowed an unreasonable number of occupants in the unit/site.

In the "Details of Cause" section of the notice, the landlord has provided the following additional information:

Unreasonable numbers of occupants living in the unit & too much traffic 24-7 at the door.

The landlord confirmed that he had been out of the country for several weeks and did not have an opportunity to submit any evidence in advance of this hearing. The landlord presented only verbal testimony that the tenant allows two to three people, who are not occupants of the rental unit to stay overnight, and that there is drug traffic in relation to the rental unit.

The tenant's assistant, who is an occupant of the rental unit, disputed the landlord's claim and stated that the tenant is an elderly man who has friends visit him several times a week and who assist with cleaning the rental unit and helping the tenant when the tenant's assistant is not home. The tenant's assistant acknowledged that there was a past issue with drug traffic in the apartment complex, but that she has been proactive in directing people involved in the drug trade to leave the apartment complex. The tenant's assistant also acknowledged that a friend of hers did stay at the rental unit for a couple of weeks on a temporary basis, but she advised the landlord of the circumstance in advance.

Analysis

Section 47 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.

The tenant acknowledged being personally served with the landlord's One Month Notice on July 30, 2018.

The tenant filed an application to dispute the notice on August 9, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

In this matter, the landlord failed to submit any documentary evidence regarding his allegations against the tenant or call on any third-party witnesses to provide corroborating testimony. The landlord only provided his own testimony, which was disputed by the tenant.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord failed to provide sufficient evidence to prove that the tenant has an unreasonable number of occupants in the unit or is responsible for an excessive amount of people visiting the unit.

As such, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in the application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated July 30,

2018 is cancelled and of no force or effect, and this tenancy shall continue until it is 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: October 1, 2018

Residential Tenancy Branch