



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 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence. The tenant confirmed receipt of the landlord's evidence which was attached to the tenant's door. In accordance with section 88 of the *Act*, I find the tenant deemed served with the landlord's evidentiary materials. As neither party submitted a copy of the 1 Month Notice in their evidence, the tenant indicated in the hearing that he had no issue with the landlord submitting a copy after the hearing.

The landlord gave undisputed sworn testimony that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) was served to the tenant on August 2, 2018 by posting it on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice was deemed served on August 5, 2018, three days after posting.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began in April 2012, with monthly rent currently set at \$1,102.00 per month, payable on the first of each month. A security deposit in the amount of \$487.50 was paid by the tenant, which the landlord still holds.

The landlord served the tenant with the notice to end tenancy providing 9 grounds:

1. the tenant is repeatedly late paying rent;
2. the tenant has allowed an unreasonable number of occupants in the unit/site;
3. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
4. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
5. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
6. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
7. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize the health or safety or lawful right of another occupant or the landlord;
8. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so; and
9. The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that the main reason the landlord issued the 1 Month Notice and is seeking the end of this tenancy as that the tenant has caused significant damage to the rental unit, specifically the deck. The landlord testified in the hearing that the strata notified him that there was a smell originating from the rental unit, and the cleaner attended to investigate. The tenant's deck smelled like sewage or urine. As a result of the smell, the landlord was fined by the strata. The landlord testified that the tenant had also allowed an additional occupant to live there without the landlord's permission and knowledge. The landlord also testified that the tenant's actual name differs than the one given to the landlord and on the tenancy agreement. The tenant admitted that he used a different surname for the tenancy agreement, which on the tenancy agreement was the same as his co-tenant's. The tenant testified that he used both last names, and often interchanged the two.

The tenant replied that the smell and damage to the deck was due to drainage issues, and not him urinating or causing damage to the deck. The tenant testified that leaves

would plug the drain holes, causing the leaves to rot and compost causing sitting water and a bad smell.

The tenant testified that he did allow someone to stay with him, but that person has now left. The tenant testified that the person lived there with no issues, and once the matter was brought up he dealt with the situation. The landlord testified that he heard from others in the building that the occupant is still there.

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. The tenant filed his application on August 8, 2018, 3 days after the date the notice was deemed served to him. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

The landlord provided several reasons for why this tenancy should end. Although the landlord testified that a bad smell originated from the tenant's deck, and that there was damage, I find that the tenant provided credible evidence that this damage may be attributed to lack of maintenance, or due to issues with the deck and drainage rather than the deliberate actions of the tenant. As the onus of proof falls on the landlord to demonstrate why this tenancy should end, I find that the landlord has not provided sufficient evidence to demonstrate that the tenant had damaged the deck or caused the smell.

The tenant admitted to allowing an additional occupant to stay in his rental unit. Although this may have been a breach of the tenancy agreement, I must be satisfied that this breach is significant enough to justify the termination of this tenancy. The reasons indicated on the notice are the "tenant has allowed an unreasonable number of occupants in the unit/site" and "breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so". I find that the landlord has not provided sufficient evidence to demonstrate that this additional occupant contributed to an unreasonable number of occupants, despite the fact that the landlord did not give permission or have knowledge of this additional occupant. I also find that there was conflicting evidence about whether the additional occupant did move out. Accordingly, I find that the landlord has not provided sufficient evidence to support that this tenancy should end on these grounds.

I have considered the fact that the tenant provided a different name to the landlord at the beginning of this tenancy. I note that the tenant's first name remains the same, but the last name is different. Although possibly concerning, I find that the name used by the tenant is the same as his co-tenant's, and I accept the tenant's testimony that he interchangeably uses the two last names. As the tenant's name is not entirely different, and in consideration of the evidence and testimony given, I am not satisfied that the tenant had intentionally used a different last name to deceive the landlord. I do not find the use of the alternative last name significant enough to warrant terminating this tenancy, and on this basis, I find that the landlord has not provided sufficient reason for why this tenancy should end on this basis.

The landlord had also cited that the tenant had engaged in illegal activity as a reason for ending this tenancy. The landlord did not provide any testimony, nor did he submit any written evidence, in support of this claim. In the absence of this information, and sufficient evidence, I find the landlord has not established that the tenant had engaged in any illegal activity.

Similarly, the landlord cited "repeated rent payments" as a reason for ending this tenancy. I am not satisfied that the landlord's evidence supports that the tenant has provided sufficient evidence to support that this tenancy should end on this ground.

I have considered the testimony and evidence submitted for this hearing, and I find that the landlord has not met the burden of proof to support that this tenancy should end on the 9 grounds indicated on the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

As the tenant was successful in their application, I allow the tenant to recover the filing fee for this application.

Conclusion

I allow the tenant's application, and the 1 Month Notice is cancelled. The 1 Month Notice served to the tenant on August 2, 2018 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is

not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 12, 2018

Residential Tenancy Branch