



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT

Introduction

This hearing dealt with the tenant's application pursuant to 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and 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 dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

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The tenant confirmed receipt of the 1 Month Notice, which was posted on his door on August 22, 2018. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began in March of 2012, with monthly rent currently set at \$448.00 per month, payable on the first of each month. The tenant continues to reside in the rental suite.

The landlord issued a 1 Month Notice to End Tenancy on August 22, 2018, providing 3 grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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; and
3. 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.

It was undisputed by all parties that an incident took place on August 21, 2018 when the tenant was involved in a fight with another tenant RS. RS no longer resides there. The landlord testified that RS sustained alarming injuries after a fight that took place in RS' home. The landlord testified that there was a substantial amount of blood, and although the landlord was not present, PW, the landlord's witness testified that she was called by another tenant about the fight. The police attended, but no charges have been laid.

The tenant admitted that he was involved in a fight with RS, but that RS was intoxicated and he had to fight back out of self-defence. It was undisputed that RS was involved in another fight earlier with another person that contributed to the visible injuries in the photo submitted in evidence. The tenant submitted a handwritten statement by RS, which included an admission that RS was intoxicated, and a fight ensued after a disagreement. The letter states that RS was involved in another fight earlier where RS was punched in the face. RS also stated that he had punched the tenant in the back of the head, and the tenant fought back out of self-defence. The tenant also testified that the witness who called PW was also very intoxicated.

The landlord believes that this incident is grounds for the end of the tenancy as the landlord and other occupants, seniors, found the incident disturbing and threatening.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

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 the application on August 30, 2018, 5 days after the date the tenant is deemed to have received the 1 Month Notice. 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 they have cause to end the tenancy.

I have considered the sworn testimony of both parties as well as the written evidence submitted for this hearing. Although the incident was disturbing in nature, I am not satisfied that the landlord has provided sufficient evidence to support that this tenancy should end on the grounds provided in the 1 Month Notice. I find that the tenant provided credible evidence and testimony about what took place on August 21, 2018, and I am satisfied that this was an isolated incident which involved a very intoxicated party who no longer resides in the building. I find that the tenant's submissions are corroborated by RS's own letter that states that he was intoxicated, and was already involved in another fight earlier on the same date that contributed to the visible injuries as seen in the landlord's evidence. I accept the tenant and RS's statements that the tenant had to fight back in self-defence, and accordingly I am not satisfied that the landlord has demonstrated that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord to the extent that warrants the termination of this tenancy.

The landlord also selected that illegal activity as a ground for why this tenancy should end. I find that the landlord failed to provide sufficient evidence to support that the tenant had participated in, or has been charged with any illegal activity. Accordingly, I am not satisfied that this tenancy should end on the grounds of illegal activity.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*, and accordingly I am allowing the tenant's application for cancellation of the 1 Month Notice dated August 22, 2018. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

I find that the tenant's application has merit, and therefore he is entitled to recover the filing fee for this application.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated August 22, 2018. The 1 Month Notice of 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 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 17, 2018

Residential Tenancy Branch