



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for

- more time to make their application pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

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 was assisted by their family support worker.

As both parties were present service was confirmed. The landlord said that they served the 1 Month Notice by posting on the rental unit door on September 1, 2018. The tenant confirmed receipt of the 1 Month Notice. I find that the tenant was served with the 1 Month Notice in accordance with section 88 of the Act. The tenant testified that they filed their application for dispute resolution on September 11, 2018 and served it with evidence on the landlord. The landlord confirmed receipt of the tenant's dispute resolution package. I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the Act. The landlord said they had not submitted any documentary evidence.

Issue(s) to be Decided

Are the tenants entitled to more time to file their application? Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy started over 4 years ago. Neither party recalled the exact date when the tenancy began. The current monthly rent is \$850.00 payable on the first of each month. The rental unit is in a multi-unit rental building.

The landlord indicated on the 1 Month Notice that the reasons for ending the tenancy are:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

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 or the landlord;*

The landlord testified about an instance where the tenant's adult son did not have his keys to return to the rental unit and buzzed the other occupants of the building seeking access. The landlord also said that the tenant has asked for cigarettes from other occupants of the building and the other occupants are uncomfortable with his presence. The landlord said that some occupants have accused the tenant of stealing from their vehicles. The landlord said that the complaints have all been verbal and there are no written complaints or written records of the issues raised.

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.

I accept the evidence of the parties that the 1 Month Notice was issued on September 1, 2018 and that the tenants filed their application for dispute resolution on September 11, 2018. As such, I find that the application was filed within the ten days provided under the *Act* and the tenants' application seeking more time to file their application is unnecessary.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

In the matter at hand the landlord must demonstrate that the tenants or a person permitted on the property by the tenants has significantly interfered with or

unreasonably disturbed another occupant, has caused serious jeopardy to the health or safety of the landlord or others, or that they have engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. The landlord made some submissions about the tenant's behaviour but I find that there is insufficient evidence that the conduct warrants ending this tenancy. I find that the landlord's testimony about complaints from occupants without any documentary evidence in support to be insufficient to establish that the tenants' behaviour has been a disturbance. I find that asking for cigarettes, buzzing other occupants to not be illegal activity that would give rise to an end of the tenancy.

The landlord gave testimony about the demeanor and apparent health of the tenants but I find that is irrelevant to the matter at hand and not a basis for issuing a Notice to End Tenancy.

I find that individually and cumulatively the landlord has not provided sufficient evidence to meet the burden of proof that the tenants' actions have given rise to cause to end this tenancy at this time. Consequently, I dismiss the landlord's 1 Month Notice.

Conclusion

The tenant's application is allowed. The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until 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 23, 2018

Residential Tenancy Branch