



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

Only the tenant attended the hearing and gave affirmed testimony. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:55 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. on October 25, 2018. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The One Month Notice to End Tenancy is dated August 15, 2018 to be effective (undated) and the tenant confirmed it was served personally on August 15th. The effective date on the Notice is automatically corrected to September 30, 2018 pursuant to section 53 of the *Residential Tenancy Act* (the Act) as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated August 17, 2018 by registered mail. The postal tracking showed the registered mail was available for pickup from August 21, 2018 until August 28, 2018 and several notices were left but it was not picked up by the landlord. I find the Notice to End Tenancy was legally served pursuant to section 89 of the Act and the Application is deemed to be served pursuant to section 90 for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To order the landlord to comply with section 29 of the Act and limit their entry accordingly; and
- c) To recover filing fees for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. He said the tenancy commenced July 9, 2018, rent is \$650 a month and a security deposit of \$325 was paid.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure require the landlord to provide their evidence first as the landlord has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- b) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord did not attend the hearing to provide any evidence. The tenant said he is a musician and also has other jobs. He practices guitar and trombone at reasonable levels and not after 9:30 p.m. or before 11a.m. He thinks this is why the Notice to End Tenancy was served. He requests to cancel the Notice for he believes he should have the ability to practice his music at reasonable hours.

He said this household is somewhat dysfunctional and does not have the same sense of community as some of his previous homes. The mother of the owner is the house manager and has entered his unit without advance notice or permission. He requests that she be ordered to obey the Act and give proper Notice of Entry and the reason for such entry.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

The onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the landlord has not satisfied the onus. They did not attend the hearing to support their Notice and filed no documents in support. I find the tenant has the right to peaceful enjoyment of his unit pursuant to section 28 of the Act and this would encompass the right to practice his music at reasonable levels between the hours of 11 a.m. and 9:30 p.m. I set aside the Notice to End Tenancy dated August 15, 2018. The tenancy is continued.

I find section 29 of the Act restricts a landlord from entering a tenant's unit unless the tenant gives permission or the landlord provides at least 24 hour written notice of the entry and purpose and the entry is for a reasonable purpose.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated August 15, 2018 is set aside and cancelled. The tenancy is continued until legally ended in accordance with the Act. I find the tenant entitled to recover his filing fee.

I HEREBY ORDER THE LANDLORD TO OBEY SECTION 29 OF THE ACT AND NOT ENTER THE TENANT'S UNIT WITHOUT PERMISSION AND TO GIVE 24 HOUR WRITTEN NOTICE OF ENTRY.

I HEREBY ORDER THAT THE TENANT MAY DEDUCT \$100 FROM HIS RENT TO RECOVER THE FILING FEE.

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