



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.

As both parties were present, service of documents was confirmed. The tenant testified that she personally served the landlord with the Notice of Dispute Resolution Proceeding for this hearing on September 18, 2018, which was confirmed by the landlord. The only evidence submitted by the tenant was a copy of the landlord's One Month Notice dated September 4, 2018 and the one-page addendum to the tenancy agreement between the parties. The landlord testified that he had not submitted any evidence in this matter as he was still awaiting receipt of police report information in response to his Freedom of Information request. Based on the undisputed testimonies of the parties, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

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.

The parties confirmed that there was a one-page written tenancy agreement signed by the parties, but neither party had a copy of the document available at the hearing. The tenant submitted into evidence the one-page addendum to the tenancy agreement, which both parties had available to them during the hearing.

The parties confirmed that this month-to-month tenancy began in May 2016. The tenant pays \$570.00 monthly rent due by the first of the month. The tenant paid a security deposit of \$275.00 at the beginning of the tenancy which the landlord continues to hold.

The rental unit consists of a 12-foot by 68-foot manufactured home and site, which contains two bedrooms and one bathroom.

The parties confirmed that the tenant was served the One Month Notice dated September 4, 2018 in person on September 4, 2018. The tenant submitted a copy of the notice into evidence. The notice states an effective vacancy date of October 4, 2018, however, I explained to the parties that this date is incorrect, and that pursuant to section 53 of the *Act*, the effective vacancy date of the notice automatically corrects to the earliest effective date allowed by the *Act*, which in this case is October 31, 2018.

On the second page of the One Month Notice the following boxes are checked off as the reasons for seeking an end to this tenancy:

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

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.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

I note that the landlord has provided the following details regarding the reasons to end tenancy in the "Details of Cause" section provided on the form:

*RCMP reported tenant was subletting rooms as per FI Act
RCMP reported multiple complaint from neighbors about drugs & noise.*

The landlord testified that he had submitted a Freedom of Information request to obtain information from police reports related to police calls to the rental unit. However, the landlord's information request had not yet been processed by the date of the hearing.

The landlord testified that without the police evidence, he could only rely on hearsay information from friends living in the area reporting issues of police activity at the rental unit. The landlord also did not have any evidence regarding his claim that the tenant had allowed an unreasonable number of occupants in the rental unit or that she had sublet the rental unit.

The tenant acknowledged that police had attended at the rental unit, however she testified that it was at her request for police assistance due to domestic incidents that occurred between the tenant and her husband, who is a co-tenant, as well as an incident between the tenant's daughter and the daughter's boyfriend, during a visit.

The tenant testified that she has never sublet the rental unit. She further confirmed that the current occupants of the rental unit consist of the tenant, the tenant's husband who is named on the tenancy agreement as a co-tenant, and the tenant's uncle.

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 received the landlord's One Month Notice on September 4, 2018 and filed an application to dispute the notice on September 13, 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, 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 evidence regarding the reasons to end tenancy, and the tenant disputed the reasons to end tenancy provided by the landlord.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the reasons for ending the tenancy stated on the One Month Notice.

As such, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause. The tenant's application to dismiss the One Month Notice is granted and the landlord's One Month Notice is cancelled and of no force or effect.

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

Conclusion

The tenant was successful in her application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated September 4, 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 29, 2018

Residential Tenancy Branch