



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") to cancel 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 be heard, to present affirmed testimony, to make submissions, and to call witnesses. While the tenant RS indicated she would primarily speak on behalf of both named co-tenants, ultimately throughout the hearing both tenants gave evidence, interrupted one another's testimony as well as the testimony of the landlord and often spoke out of turn.

As both parties were present service was confirmed. The tenants confirmed receipt of the landlord's 1 Month Notice dated July 31, 2018 on or about that date. The landlord confirmed receipt of the tenants' application for dispute resolution dated August 7, 2018 and their evidence. The tenants confirmed receipt of the landlord's evidentiary materials. Based on the undisputed testimonies of the parties I find that all of the respective materials were served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

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

Background and Evidence

This periodic tenancy began in April, 2017. The monthly rent is \$700.00 payable on the first of each month. The rental unit is a suite in a multi-unit building with 19 units in total.

The landlord issued the 1 Month Notice dated July 31, 2018 which provides the reason for the tenancy to end as:

Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord indicated that the illegal activity consists of the tenants having installed an alarm system in their suite without the landlord's authorization or knowledge in or about June, 2018. The landlord testified that the alarm system does not prohibit the landlord's access to the suite. The landlord said that they have received multiple complaints about the tenants from other residents. The landlord submitted into documentary evidence the complaint letters from other occupants of the building.

The landlord said that the tenants have accused the landlord and other residents of breaking into the tenants' suite and misappropriating goods. The tenants testified that they believe an alarm system is necessary to protect their belongings. Both parties also gave evidence regarding their past interactions and conflicts.

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. 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 has identified the reasons for issuing the 1 Month Notice as the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. Installing an alarm system in a rental suit is not inherently an illegal activity. The landlord testified that the alarm system does not prevent access to the suite. There is no evidence that the tenants have barricaded the suite. While the landlord has submitted into evidence complaint letters from other residents regarding the tenants' behavior, I find that the complaints do not show that there has been

behaviour which would be characterized as illegal. The tenants may be rude, obstinate, unpleasant and an annoyance but I find that it is not illegal per se.

When a landlord issues a 1 Month Notice on the basis of illegal activity the onus is on the landlord to show that there has been illegal activity conducted by the tenant that has jeopardized lawful rights of others. I find that the landlord has not established that there has been illegal activity by the tenants. The tenants' behaviour and attitude may give rise to complaints and a basis for a separate Notice to End Tenancy to be issued but in the present matter I find that the landlord has not established that there are grounds for ending this tenancy.

Therefore, the tenant's application is allowed.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing 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: September 24, 2018

Residential Tenancy Branch