



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROPSERO INTERNATIONAL REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

- 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 via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package and the submitted documentary evidence submitted by either party via Canada Post Registered Mail. Neither party raised any service issues. I accept the undisputed evidence that both parties have been served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail and am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2014 on a fixed term tenancy ending on April 30, 2015 and then thereafter on a month-to-month basis as per the submitted copy of the signed

tenancy agreement dated May 1, 2014. The monthly rent is \$1,020.00 payable on the 1st day of each month.

On July 26, 2018, the landlord's agent (the landlord) served the tenants with the 1 Month Notice dated July 26, 2018 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of August 31, 2018 and that it was being given as:

- the tenant or 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The listed details of cause are:

The smoke from this unit is negatively affecting the health and enjoyment of neighboring tenants.

The tenants argued that they have “never interfered with any tenant or Landlord always very friendly they are confused because the tenant above us had 7 to 8 people whole night in her apt. smoking and grinding stuff all night on wooden floors too much noise”...

In support of this claim the landlord has submitted:

A copy of Addendum condition #36 states, No Smoking, which was initialed by both the landlord's agent and both named tenants.

A letter dated July 23, 2018 re: Smoke and Noise Complaint

A letter dated July 11, 2018 re: Loss of Quiet Enjoyment

The landlord did not investigate the source of the smoke or the claims of the upstairs tenant and rely solely on the detailed report from the upstairs tenant. The landlord deemed the claims credible due to the specific listing of times and dates that noted smoke.

The tenants dispute these claims stating that over 80% of the occupants of the rental building smoke and that the smoke could have come from any of them in the area. The tenants have provided copies of 1 reference letter by another occupant of the rental

building which confirmed that atleast 80% of the occupants of the rental building smoke in the building. The tenants stated that the building is not noted as a “Non-Smoking” building.

The landlord confirmed that there are other tenants of the rental building who do smoke as allowed in their tenancy and that the source of smoke was never investigated by the landlord.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence that the tenants were served with the 1 month notice dated July 26, 2018 for cause by posting it to the rental unit door. The primary issue noted by the landlord for all three reasons selected for cause is that the tenant (specifically, H.B.) was smoking in the rental unit contrary to the listed addendum term of “No Smoking”.

In this case, the landlord relies solely on the detailed letter of complaint by another occupant of the rental building above the named tenants. Although the letter details specific times and dates of smoke the landlord did not investigate the source of the smoke and relied solely on the complaint. The tenants have disputed the landlord’s claims stating that the tenant, H.B. has smoked in the bathroom, but has stopped since receiving the caution letter on July 23, 2018. Both parties have confirmed that smoking is allowed in the building and that a large number of those tenants are allowed to smoke as per their signed tenancy agreements. As such, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence as to the source of smoke and that it is directly attributed to the tenants. The tenants’ application to cancel the 1 month notice dated July 26, 2018 is granted. The 1 month notice is set aside and the tenancy shall continue.

Conclusion

The tenants' application to cancel the 1 month notice is granted. The tenancy shall continue.

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 17, 2018

Residential Tenancy Branch