



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Donlor Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a cancellation of a One Month Notice to End Tenancy for Cause.

The Tenant and her advocate appeared for the scheduled hearing (hereinafter referred to as “Tenant”). The Landlord did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the Landlord to call into this teleconference hearing scheduled for 9:30 a.m.

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, her advocate and I were the only ones who had called into this teleconference.

The Tenant explained that the Notice of Hearing was sent by registered mail to the Landlord on September 5, 2018 and that it was returned not delivered. She used the address the Landlord provided on the eviction notice served on the Tenant. The evidence package was sent out by registered mail to the same address on September 26, 2018 and the Tenant noted that delivery was accepted.

The Landlord apparently did not accept delivery of the Notice of Hearing which was delivered by registered mail, a method allowed under section 89 of the Act. Under section 90 of the Act, it is deemed to have been received 5 days after being mailed, which is September 10, 2018.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the Residential Tenancy Act ("Act")?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Background and Evidence

This tenancy began August 5, 2008; rent was initially \$715.00 a month and a \$360.00 security deposit was paid; a copy of the signed tenancy agreement was submitted into evidence. The advocate stated that the current rent amount is about \$825.00 per month.

The Tenant was served with a One Month Notice to End Tenancy in person on August 21, 2018 and disputed it by filing this application on August 30, 2018. The reasons given in the Notice were:

- Tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant put the landlord's property at risk
- Tenant caused extraordinary damage to the unit or property

A copy of the Notice was submitted into evidence.

The Landlord noted that in early April there were complaints of a urine smell from the rental unit and it was discovered that there was liquid coming from the bathroom and into the hallway. It states "fixed toilet, however liquid was due to excess liquid". The Landlord gave an effective date to move out of September 30, 2018.

The Tenant denies being negligent or causing any damage. She states that the building was built in the 1960's and the bathroom may be original and is in need of work. The previous property manager was slowly replacing appliances and parts of the kitchen and had planned to do work in the bathroom next; the new property manager took over in January and the Tenant suspects they want her removed so that they can renovate the unit and rent it out for more money.

The Tenant states that she is a clean person and submitted witness statements and photographs into evidence to show this. She has been living in the rental unit for ten years without incident. Although the toilet flushes, she says the liquid continues to escape from the base, requiring her to attend to cleaning on a regular basis. She states that there was no formal investigation or repair done to the toilet to her knowledge. In one of the letters submitted, the case manager who works with the Tenant reported that she attended at the rental unit on January 12, 2018 and that there was no urine odour.

She goes on to state in her letter dated September 24, 2018: *"I did not notice any concerns in relation to cleanliness or sanitation. As well, the case manager from the [organization name redacted] visited her on the 14th of September this year to assess her eligibility for home support services. They noted that, except for the strong smell of urine, her place was clean. They observed that the toilet was leaking which may be the source of the odour. They concluded that the cause of the odour has to be addressed. Deficient housekeeping and cleaning does not seem to be the problem."*

The Tenant asks that the Notice to End Tenancy be cancelled and that the tenancy be allowed to continue.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. I am satisfied that the Landlord was served with notice of the hearing pursuant to section 90 and the hearing continued in the Landlord's absence.

A landlord may end a tenancy with a month's notice under section 47 of the Act. The burden rests with the landlord to provide evidence to establish cause to end the tenancy however, the landlord has failed to attend this hearing and present any evidence at all.

The Notice to End Tenancy is hereby cancelled and of no force or effect. The tenancy shall continue until such time that it is terminated with proper notice from either party.

Conclusion

The One Month Notice to End Tenancy dated August 21, 2018 is hereby cancelled and of no force or effect.

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 22, 2018

Residential Tenancy Branch