



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 (the "**Notice**") pursuant to section 47.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she received the tenant's notice of dispute resolution package on approximately November 9, 2018. I find that the landlord was served with this package in accordance with section 89 of the Act.

The landlord testified that the tenant was served with her evidence package on December 7, 2018 by posting it on the tenant's door and by mail. The tenant confirmed receipt of the landlord's evidence package. I find that the tenant was deemed served with this package on December 10, three days after the landlord posted it to the tenant's door, in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of both parties, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below.

The parties agreed that the tenancy agreement for the unit in question (the "**Unit**") requires the tenant to pay monthly rent on the first of each month in the amount of \$555. It has subsequently been raised to \$600. The tenancy agreement was entered into on March 14, 2012, and is now currently a month to month tenancy. The tenant paid a security deposit of \$277.50, and the landlord continues to hold it.

On November 5, 2018, the landlord issued the Notice, with an effective date of December 10, 2018. Two copies of the Notice were submitted into evidence. The copy submitted by the landlord bears the landlord's name and signature and is stamped "FILE COPY". The copy submitted by the tenant bears neither the landlord's name nor signature and is stamped "TENANT COPY".

Both parties agreed that the Notice stamped "TENANT COPY" is the copy of the notice that was served on the tenant via posting on the Unit's door.

The Notice set out the grounds for ending the tenancy as:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; and
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; and
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that after the building's prior caretaker retired there have been a number of complaints from other tenants about the tenant regarding unreasonable foot traffic in and out of the Unit, excessive noise, and use of marijuana. The landlord did not submit to any documentary evidence from other tenants (such as emails, letters, or notes) in support of these complaints. The tenant denied that such complaints occurred,

and denied that he uses marijuana. The tenant did not deny that he had people over to the Unit, but asked rhetorically, "I'm not allowed to have friends over"?

The landlord provided no evidence, oral or otherwise, as to the number or frequency of visitors to, or occupants in, the Unit.

The landlord testified that three days prior to the issuance of the Notice, an individual overdosed on drugs in the Unit. She alluded to a police report which stated that the tenant admitted that his friend overdosed in the apartment while he was not there. No such police report was entered into evidence. Nor were any hospital or ambulance records which may have corroborated the landlord's account.

The landlord testified that, in the wake of the alleged overdose, she received letters from six different tenants, who expressed fears about their safety, in light of the overdose. The landlord testified that she did not submit these letters into evidence at the request of the tenants to keep their identities confidential.

The tenant denied that his friend overdosed. Rather, he testified, his friend had a bad fall in the Unit, and the tenant called an ambulance to take his friend to the hospital.

Finally, the landlord alleged that, during a scheduled fire inspection, she discovered bedbugs in the Unit. She alleged that the tenant failed to report the bedbugs.

The tenant denies he failed to report the bedbugs, and testified that he had reported them previously, but that the landlord did not take steps to remove them.

Analysis

It is no small thing to evict a tenant from their home of over six years. The landlord bears the onus of persuading me that, on a balance of probabilities, the Notice was validly made, and that the reasons for issuing the Notice are true. If the landlord cannot, I must grant the tenant's application that the Notice be cancelled.

In this case, I am wholly unpersuaded by the landlord's evidence. For the reasons that follow, I grant the relief sought by the tenant, and I order that the Notice is cancelled.

The landlord testified that the tenant used drugs, had an overdose occur in the Unit, and allowed an unreasonable number of occupants in the unit. Yet, beyond her oral

testimony, the landlord provided no evidence of any of this. She referred to documents which may have corroborated her testimony (a police report, letters from tenants), and yet entered none into evidence.

I am not persuaded that the stated reason of maintaining confidentiality of the other tenants is sufficient reason for not entering the other tenants' letters. They could have been entered with redactions. An anonymous statement may have been entered. While an arbitrator may assign such documents less weight than a document where the writer is known, they would act as some form of corroboration.

Corroboration is important in a case such as this, as the tenant's testimony directly contradicts much of the landlord. In such cases, an arbitrator will look for documentary evidence which would support one party's version of events over another. If no such documents are provided, an arbitrator may find that the party bearing the evidentiary burden of proving a fact failed to discharge that burden.

Such is the case here. In light of the lack of corroborating evidence and the parties' conflicting testimony, I find that the landlord failed to meet her evidentiary onus. Documents which may have corroborated one or other of the parties' accounts existed, and were within her power to provide, yet she failed to do so.

In addition to the foregoing reasons, I note that the Notice served on the tenant was not signed by the landlord. Section 52 of the Act reads:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

[emphasis added]

The language of section 52 is mandatory. In order for the Notice to be effective, it must be signed by the landlord. The Notice was not signed by the landlord. Therefore, the notice is not effective.

For the foregoing reasons, I grant the tenant's application, and cancel the Notice.

Conclusion

I order that the Notice is cancelled, and is of no force and 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: December 21, 2018

Residential Tenancy Branch