



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TLA ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 19, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated November 11, 2018 (the "One Month Notice"); and
- an order that the Landlord comply with the *Act*, regulation, and/or tenancy agreement;

The Tenant as well as T.H., an agent for the Landlord, attended the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Landlord was served with the Application package and documentary evidence via registered mail. T.H. acknowledged receipt. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

In addition, T.H. testified that the documentary evidence upon which she intended to rely on was served to the Residential Tenancy Branch; however, T.H. indicated that she did not serve a copy of the evidence to the Tenant.

According to the Residential Tenancy Branch Rules of Procedure 3.15; the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Rules of Procedure 3.17 states that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing depending on if the party can demonstrate that it is new and relevant evidence and that it was not available at the time they were served and submitted their evidence.

While the Tenant acknowledged that he did not receive the evidence from T.H., he was still willing to proceed with the hearing in lieu of an adjournment. For this reason, the

evidence submitted to the Residential Tenancy Branch by T.H. will not be considered in this Hearing. Only oral testimony from T.H. will be considered in lieu of the documentary evidence.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is not successful in cancelling the One Month Notice, is the landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on November 17, 2017. Currently, rent in the amount of \$460.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$230.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice with a corrected vacancy date of December 31, 2018 on the following basis:

Tenant has engaged in illegal activity that has, or likely to:

- a) Damage the landlord's property; and*
- b) Adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant.*

A copy of the One Month Notice was submitted into evidence by the Tenant. T.H testified that the notice was placed on the Tenants door on November 11, 2018. The Tenant confirmed having received the Notice on that date.

The Notice provides information for Tenant who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

During the hearing, T.H. raised three issues of particular concern. First, she testified that on November 8, 2018, the Tenant “flipped the breaker” to the building on and off over a period of time, which impacted three other tenants in the building.

In reply, the Tenant denied “flipping the breaker”.

Second, T.H. testified that near the end of October 2018, the Tenant changed the lock to his suite, which prevented the Landlord from entering his suite.

In reply, the Tenant acknowledged that he changed the lock to his suite after he found that a key had broken off in the lock, which prevented him from securing his suite. The Tenant states that he felt it was an emergency situation as he felt his suite could easily be accessed by others in the area that he didn’t trust. The Tenant confirms that he changed the lock at the end of October 2018 and provided a spare key to the Landlord prior to November 11, 2018.

T.H. confirms having received the spare key to the Tenant’s suite; however, T.H. was still unable to gain access. She suspects that the Tenant may have an additional lock on the inside of his door. The Tenant denies having any other locks on the door.

Lastly, T.H. states that she feels unsafe at the building when the Tenant around. When asked to elaborate, T.H. stated that the Tenant has threatened her in the past. No specifics were provided. The Tenant denied that he has threatened T.H.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlord wishes to end the tenancy on the bases indicated on the One Month Notice, described above.

Further, Policy Guideline #32 confirms that the party alleging the illegal activity has the burden of proving that the activities were illegal.

With respect to the concerns noted by T.H., I find there is insufficient evidence before me that the Tenant engaged in an act that is prohibited by any statute or bylaw or if he did that the activity was serious enough to have a harmful impact on the Landlord, the Landlord’s property, or other occupants of the residential property.

In light of my findings above, I find the landlord has failed to establish they have cause to end this tenancy and I order the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant did not make any specific submissions with respect to the request for an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement. However, the Tenant remains at liberty to reapply for this relief pursuant to the *Act*.

Conclusion

I order that the One Month Notice issued on November 11, 2018 is cancelled. The tenancy will continue until otherwise 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: January 03, 2019

Residential Tenancy Branch