



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOMES LTD.
and [tenant name suppressed to protect privacy]

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 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, to present affirmed testimony, to make submissions and to call witnesses. The landlords were represented by their agent SS (the "landlord").

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the 1 Month Notice dated November 30, 2018. The landlord confirmed receipt of the tenant's application for dispute resolution dated December 10, 2018 and evidence. The landlord confirmed they had not served any evidence. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an order of possession?

Background and Evidence

The parties agree on the following facts. The tenant has been residing in the rental unit for several years. The landlord took over the tenancy in November, 2016. The current

monthly rent is \$1,568.00 payable on the first of each month. The rental unit is one-half of a duplex building.

The landlord issued a 1 Month Notice dated November 30, 2018 indicating the reason for this tenancy to end as, the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. The landlord testified that the tenant has allowed 4 additional occupants to reside in the rental unit. The landlord said that as a result of the number of residents they have been unable to insure the rental property.

The landlord called their insurance broker as a witness. The witness confirmed that they have declined to insure the rental property due to the number of unrelated occupants residing in the rental suite.

The landlord submits that the tenant is putting the property at significant risk as the suite cannot be insured.

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 present case the landlord must show that the tenant has put the property at significant risk.

I find that the landlord has not provided sufficient evidence in support of their position. While I accept the evidence that the insurance broker has declined to insure the rental property lack of insurance does not put the property at significant risk or increase the risk to the property.

I find that there is a fundamental misunderstanding of the function of insurance. The absence of a valid insurance policy does not affect the potential risk to the rental property. It simply means that the insurance company will not provide funds for repair or replacement should something occur.

The witness testified that the reason the property does not qualify for an insurance policy is due to the number of occupants. There was little evidence given that the tenant or the other occupants have engaged in activity or conduct that puts the property at greater risk. While the landlord made some mention of the use of a hotplate I find that is insufficient to find that the property is placed in significant risk.

I find that the landlords have not provided sufficient evidence to show on a balance of probabilities that there is reason for this tenancy to end. Consequently, I allow the tenant's application to cancel the 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. This tenancy will continue 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: January 7, 2019

Residential Tenancy Branch