



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KSAN SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated December 3, 2018 (“1 Month Notice”).

The tenant, a tenant advocate (“advocate”), and an agent for the landlord (“agent”) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The tenant confirmed that they had the opportunity to review the documentary evidence from the landlord prior to the hearing and that the tenant did not submit documentary evidence in support of their application.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

Issue to be Decided

- Should the 1 Month Notice cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on October 1, 2016. The parties agree that the 1 Month Notice was dated December 3, 2018. The tenant affirmed that she received the 1 Month Notice personally on December 3, 2018. The 1

Month Notice has an effective vacancy date of January 31, 2019. The tenants filed their application to cancel the 1 Month Notice on December 12, 2018.

In the 1 Month Notice, the landlord has alleged one cause which is that the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park. The landlord wrote in the Details of Cause portion of the 1 Month Notice the following:

11/29/30 front door was kicked in. Tenant knew the person who kicked it in (RF).

[Name replaced with initials]

The agent testified that they were not alleging that the tenant kicked in her own door, but that the tenant knew RF, and that due to a party at the rental unit earlier in the day RF may have been invited over. The agent confirmed that the landlord had no further evidence to support that the tenant had invited RF over to the rental unit.

The tenant testified that after coming home from dinner with her co-tenant partner, her cousin RF ("cousin") attended the rental unit uninvited and knocked on the front door. The tenant said her cousin was drunk and was looking for his girlfriend. The tenant testified that she didn't know her cousin had been released from jail and after telling her cousin he could not come in, he kicked the door in which scared the tenant and caused damage. The tenant stated that she called the police and the police advised her that he would be going away for a long time due to breaching and kicking in the door. The tenant denied inviting her cousin to the rental unit. The landlord's text message evidence fully supports the tenant's testimony.

Analysis

Based on the above the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of January 1, 2019. The tenants disputed the 1 Month Notice on December 12, 2018, which is within the ten day timeline provided for under section 47 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord alleges that the tenant knew the person that kicked in the rental unit door causing damage; however, I find the landlord has provided

insufficient evidence to prove that the person who kicked in the door causing damage was invited to the rental unit. Allegations without supporting evidence to support those allegations constitutes insufficient evidence to provide a 1 Month Notice is valid, especially when a tenants dispute the cause listed on the 1 Month Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find the landlord has provided insufficient evidence to prove that the 1 Month Notice is valid. Furthermore, based on the text message evidence from the landlord and the tenant's testimony, I find it is more likely than not that the tenant is a victim in this matter and that there is insufficient evidence before me to support that the cousin was invited to the rental unit by the tenants. Therefore, I cancel the 1 Month Notice dated December 3, 2018 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The tenants' application is successful. The 1 Month Notice issued by the landlord dated December 3, 2018, is cancelled. The tenancy shall continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2019

Residential Tenancy Branch