



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On November 29, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) asking to cancel a One Month Notice to End Tenancy dated November 23, 2018 (“the One Month Notice”).

The matter was set for a conference call hearing. Both parties attended the hearing and provided affirmed testimony and 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*Act*) requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated November 23, 2018, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

Both parties agreed that the tenancy began approximately four years ago. Rent in the amount of \$650.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$325.00. Neither party had a copy of the Tenancy Agreement available.

The Landlord testified that November 23, 2018 he was notified by the building manager that Police and Ambulance Services had responded to the building on November 22, 2018 and attended the Tenant's suite. The Landlord testified that he heard that Police were armed with assault rifles, which caused him and other tenants in the building some concern. The Landlord indicated that the Tenant was taken away in the Ambulance.

The Landlord further stated that the Tenant has made some threats in the past and has been looking through other tenant's windows.

For the above mentioned reasons, The Landlord stated they served the Tenant with the One Month Notice on November 23, 2018 with an effective vacancy date of December 30, 2018, by positing it on the door of the dispute address. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice are;

The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The 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.

In response, the Tenant testified that he struggles with a Mental Health condition, which causes him to experience seizures. On November 22, 2018, the Tenant stated that he had two seizures which caused him some concern, and subsequently phoned an Ambulance for assistance. The Paramedics as well as Police attended for precautionary measures.

The Tenant feels it is within his right to call for medical assistance should it be required. He denied ever making threats to anyone, or looking through windows.

Analysis

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

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on November 23, 2018 with an effective vacancy date of December 30, 2018, by positing it on the door of the dispute address. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord testified that the presence of Police with assault rifles at the building has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord has also indicated that the Tenant has made threats in the past, and has looked through windows which supports his claim that 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.

I find that the Tenant is entitled to seeking medical attention should he feel the need to. I find that the Tenant had no control over the fact that Police also attended in support. I find that there is insufficient evidence from the Landlord to establish that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord in relation to Police attendance.

I find that there is insufficient evidence from the Landlord to establish that the Tenant has made threats or that he was looking through windows. The Landlord could not recall in specific details regarding the dates of these incidents, or the impacted individuals during these occurrences.

In light of the above, I cancel the One Month Notice, dated November 23, 2018.

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

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated November 23, 2018 is cancelled.

The 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 21, 2019

Residential Tenancy Branch