



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled in response to 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.

The tenant and the landlord's two agents (collectively the "landlord") 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's participating parties confirmed they are agents of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice set aside? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the testimony of the parties, the tenancy began on August 1, 2013 on a fixed term unit January 31, 2014 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$715.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$327.50 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated January 2, 2019, by way of posting to the rental unit door where the tenant resides. The grounds to end the tenancy cited in that 1 Month Notice were;

- 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

The landlord and witness testified that noise formed the basis of the 1 Month Notice.

Analysis

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant. In this case, the landlord has the burden of proving that the tenant or a person permitted on the property by the tenant has engaged in illegal activity. I find the landlord has failed to establish the tenant has engaged in illegal activity, a serious violation of federal, provincial or municipal law. Accordingly, I set aside the 1 Month Notice and uphold the tenant's application to cancel it.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is 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: February 26, 2019

Residential Tenancy Branch