



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS, DRI, OLC

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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package and the submitted documentary evidence by "sticking it" between the doorknob and the landlord's door. The landlord stated that he can not give any details of how or if the tenant was served with the submitted documentary evidence. The tenant argued that no documentary evidence was received from the landlord. Neither party raised any other service issues. I accept the direct testimony of both parties and find that as both parties have attended and the landlord has confirmed receipt of the tenants documentary evidence that the landlord was sufficiently served. As for the landlord's submitted documentary evidence, I find that as the landlord cannot provide any details of how or if the tenants were served and that the tenants have stated that no documentary evidence has been received from the landlord that the landlord's documentary evidence shall be excluded from consideration in this hearing.

Preliminary Issue(s)

At the outset, the tenants request(s) were clarified. RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenant has applied for an order to cancel the 1 month notice, an order to allow the tenants to assign/sublet the rental unit, for an order for the landlord to comply with the Act, for an order for the landlord to provide services or facilities, to dispute an additional rent increase amount higher than allowed. The tenants stated that none of the other requests are related to the 1 month notice. As these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued for cause, I dismiss these sections of the tenant’s claim with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

On December 28, 2018, the landlord served the tenant with the 1 Month Notice dated December 2018 by posting it to the rental unit door. The tenants confirmed receipt of the notice as claimed by the landlord. The 1 Month Notice sets out an effective end of tenancy date of January 31, 2019 and that it was being given as:

- 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 or the landlord.

The details of cause listed on the notice state:

Nov 14- went to door cause of fighting
Nov 19- fighting
Dec 5- fighting
Dec 6- fighting

Dec 8- people yelling outside to get attention of tenant, car left at garage entry
so people cannot get in

Dec 16- fighting

At the outset, the landlord stated that there has been no illegal activity and that he did not understand the reason for cause selected on the notice.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I find in the circumstances that the landlord's 1 month notice dated December 2018 is cancelled. The landlord provided undisputed testimony that there was no illegal activity and that he had misunderstood the selection process for the reason for cause listed on the notice.

Conclusion

The tenants application to cancel the 1 month notice dated December 2018 is set aside and the tenancy shall continue.

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 14, 2019

Residential Tenancy Branch