



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

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;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package in person on January 14, 2019 and again with the submitted documentary evidence in person on January 28, 2019. Both parties confirmed the landlord served the tenant with the submitted documentary evidence on February 8, 2019. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to recovery of the filing fee?

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.

Both parties confirmed that on December 31, 2018, the landlord served the tenant with the 1 Month Notice dated December 31, 2018 by posting it to the rental unit door. 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 allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of cause listed on the 1 month notice states:

Upstairs tenant has been receiving texts as downstairs tenant wants her out. On Dec 24th, 2018, tenant was verbally abusive to Landlord. Cops were called.

The landlord claims that the tenant is occupying a 1 bedroom unit with 3 people. The tenant disputes the landlord's claims stating that he occupies the rental space with his girlfriend and that his daughter did visit for two weeks previously, but has since not occupied the rental unit since Christmas. The tenant stated that the landlord gave permission for the tenant's girlfriend to occupy the space. The landlord disputes that no permission was given to the tenant for the tenant's girlfriend to occupy the rental unit. Both parties confirmed that there is no documentary evidence in support of their claims.

The landlord clarified in his second reason for cause that the tenant was threatening another occupant (upper tenant) as well as the landlord. The landlord stated that several police complaints have been filed by both the landlord and the named tenant over these issues. The tenant disputes these claims. The landlord has not provided any documentary evidence in support of these claims, but stated that he had a witness (the upper tenant) available, but did not present the witness during the hearing when asked to provide any supporting evidence of his claims.

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.

In this case, both parties confirmed that the landlord served the tenant with the 1 month notice dated December 31, 2018 by posting it to the rental unit door on December 31, 2018. Both parties confirmed the contents of the 1 month notice served. As such, I am satisfied that the tenant was properly served.

On the two reasons for cause provided by the landlord, I find that the landlord has failed to provide sufficient evidence in support of his claims. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord has claimed that there is an unreasonable number of occupant in the rental unit and the tenant has threatened him and another occupant of the rental property. These claims were disputed by the tenant. The landlord relied solely on his direct testimony which was in conflict with the tenant's dispute. The landlord stated that he had evidence, "text messages" and "a witness", but did not provide either for the hearing. The landlord made repeated mention of the "text messages" that he had, but did not submit. The landlord also made repeated mention of the other occupant (the upper tenant), but when asked for any supporting evidence of his claims, did not provide a witness. On these grounds, the landlord has failed to provide sufficient evidence of the reasons for cause.

The tenant's application is granted. The 1 month notice dated December 31, 2018 is set aside and the tenancy shall continue. As the tenant has been successful and the tenancy continues, I authorize the tenant the recovery of the \$100.00 filing fee by withholding one-time \$100.00 from the tenant's next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted.

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 19, 2019

Residential Tenancy Branch