



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes **CNC CNL OLC** **DECISION**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- An order to cancel the landlord's 1 Month Notice to End Tenancy for Cause ("**1 Month Notice**") pursuant to section 47; and
- An order to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("**2 Month Notice**") pursuant to section 49; and
- An order for the landlord to comply with the *Act*, regulations, legislation or tenancy agreement pursuant to section 62.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:12 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that she had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant called witness PE who testified that PE had personally served the landlord with the Notice of Dispute Resolution Proceedings on January 11, 2019 at 5:00 P.M. at the landlord's residence. Based on the tenant's witness' testimony, I find the landlord was duly served with the documents required for this hearing in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Should the One Month Notice and the Two Month Notice be cancelled?
Should the landlord be required to comply with the *Act*, regulations, legislation or tenancy agreement?

Background and Evidence

The tenant testified that she received both of the Notices on January 1, 2019. I note from the evidence submitted by the tenant that her application to dispute the Notices was filed on January 10, 2019.

The One Month Notice indicates the reason to end the tenancy is:

- 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;

The Two Month Notice indicates the reason to end the tenancy is:

- The rental unit will be occupied by the landlord or the landlord's close family member.

The tenant testified that there is no written tenancy agreement. She pays rent in the amount of \$800.00 per month on the first day of each month. A security deposit in the amount of \$400.00 and a pet deposit in the amount of \$400.00 was collected at the commencement of the tenancy which the landlord still holds.

The tenant testified that the landlord is verbally abusive to her and her guests and provided text messages in support of this claim. The tenant seeks an order that the landlord stop using abusive language with her.

Analysis

Section 47 of the *Act* provides that upon receipt of a One Month Notice to End Tenancy for Cause the tenant may, **within 10 days**, dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 49 of the *Act* provides that upon receipt of a Two Month Notice to End Tenancy for Landlord's Use the tenant may, **within 15 days**, dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant received both the Notices on January 1, 2019 and filed to dispute them on January 10, 2019, which is within 10 days of receipt. Therefore, I find the tenant has applied to dispute the Notices within the time limits set out in sections 47 and 49 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as explained to the tenant in the hearing, if the tenant files an application to dispute a Notice to end

tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for issuing the Notice and that the Notice is drafted on the approved form, compliant with section 52 of the *Act*.

Accordingly, in the absence of any testimony or evidence from the landlord, who bears the burden of proof in this matter, I find that the landlord has failed to prove the grounds for issuing the One Month Notice or the Two Month Notice. The landlord has likewise failed to show the Notices complied with section 52 of the Act [form and content]. Therefore, the tenant's application is successful and the landlord's One Month Notice dated January 1, 2019 and Two Month Notice dated January 1, 2019 are cancelled and of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

Section 6 of the *Act* states the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. The tenant testified that there is no tenancy agreement between the parties. As such, the tenant's application seeking the landlord's compliance with the tenancy agreement to not use abusive language is unavailable from an arbitrator of the residential tenancy branch. This portion of the tenant's application is dismissed.

Conclusion

The tenant was successful in her application to dispute the landlord's One Month Notice and Two Month Notice. I order that the One Month Notice to End Tenancy for Cause and Two Month Notice to End Tenancy for Landlord's Use, both dated January 1, 2019 are cancelled and of no force or effect, and this tenancy shall 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 25, 2019

Residential Tenancy Branch