



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issues

The tenants' representative requested that the matter be adjourned to allow the parties to engage in settlement discussions, the landlord was opposed to having these discussions and wished to proceed on this date. After hearing from each party, I find that there is no reasonable expectation that the matter will be resolved and therefore denied the request to adjourn the matter.

The tenant applied for more time to file his application to dispute the notice. The tenant testified that he is suffering from post-traumatic stress disorder and that he is in counselling to address his issues. The tenant testified that he filed his application three days later than the legislated timeline to obtain some legal representation to assist him. The landlord did not dispute an extension of time. Section 66 of the Act talks about granting an extension due to exceptional circumstances. I find that the tenant took prudent and reasonable steps to obtain some legal assistance due to his medical issues

so that this matter could be dealt with on this date and avoid unnecessary delays, accordingly; I grant the extension and have considered all the testimony and evidence before me in making a decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy has been ongoing “for about ten years”. The tenant lives in the top floor of a house that has two other rental units that are occupied by other tenants. The rent is \$1300.00 per month and due on the first of each month. On February 8, 2019 the landlord issued a One Month Notice to End Tenancy for Cause to the tenant for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord’s property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord’s property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord testified that she was advised by another tenant that the subject tenant was causing significant disturbances from February 3, 2019 to February 7, 2019. The landlord testified that she was out of town at that time and did not witness any of the events or attend at the property at that time. The landlord testified that she was advised that the tenant was playing loud music at all times of the night and day, stomping and shouting in his suite, that he was throwing items from his balcony, made a display on the property by putting a collection of objects to create a menacing narrative, damaged another tenants car, and that the local police had to attend on six occasions

during those five days. The landlord testified that she feels that the tenant is a threat to other tenants and the property and must be evicted. The landlord requests an order of possession.

AC made the following submissions on behalf of the tenant. AC submits that the tenant and the tenant making all of the allegations do not get along. AC submits that the tenant has offered to make full restitution for the damage to the car and made that offer to the tenant and also to the landlord and that the offer is still available despite the outcome of this hearing. AC submits that the tenant does acknowledge that he was loud on a couple of occasions during the alleged dates but has sought counselling to address his problems. AC submits that the tenant has taken many positive steps in his recovery and that the tenancy shouldn't end due to a few minor incidents over a short span.

Analysis

When a landlord issues a notice to end tenancy they bear the burden of providing sufficient evidence to support the issuance of the notice. The landlord is in the difficult position of having to balance the quiet enjoyment of two tenants that all parties agreed; do not get along. The landlord testified that the tenant had not caused her any issues for over two years. The landlord testified that since the notice was issued the tenants behaviour greatly improved. The landlord testified that there was a minor incident in March but was vague on the details.

The tenant testified that he is well aware that he is on notice that any untoward or inappropriate behaviour will not be tolerated in the future and that he has made efforts to seek help. The landlord issued the notice based on the information provided to her from another tenant, however, that tenant chose not to participate in this hearing. The landlord put forth second hand information for this hearing. The landlord has not provided sufficient evidence on a balance of probabilities, to support any of the grounds she issued the notice on, accordingly; I hereby cancel the One Month Notice to End Tenancy for Cause dated February 8, 2019, and it is of no effect or force.

Conclusion

The One Month Notice to End Tenancy for Cause dated February 8, 2019 is cancelled, it is of no force or effect. The tenancy continues.

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: April 05, 2019

Residential Tenancy Branch