



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COBALT HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 15, 2019 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated February 28, 2019 (the “Notice”).

The Tenant appeared at the hearing with the Advocate. The Manager appeared at the hearing for the Landlord. S.M. appeared to assist the Manager.

I explained the hearing process to the parties who did not have questions in this regard. The parties provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and Tenant’s evidence and the Manager confirmed he received these and raised no issues in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

The Tenant confirmed that the rental unit is his permanent residence.

The Tenant testified that there is a verbal tenancy agreement between the parties in relation to the rental unit. The Manager did not know if there is a written tenancy agreement but acknowledged there is a tenancy agreement between the parties in relation to the rental unit. Both parties agreed the tenancy started four to five years ago and is a month-to-month tenancy. The Tenant testified that rent is \$465.00 per month due on the first day of each month. The Manager testified rent is \$458.00 per month due on the first day of each month.

The Tenant submitted a copy of the Notice. The grounds for the Notice are as follows:

1. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

The Manager testified that he served a copy of the Notice on the Tenant in person February 28, 2019. The Tenant testified that he was served with the Notice in person March 05, 2019.

The Manager and S.M. were given an opportunity to make submissions on the grounds for the Notice. They stated as follows. The Tenant's room is too messy. The Tenant has marked the washroom with graffiti. The Tenant misbehaves with his neighbours and the staff. He has yelled and threatened them. His sound system is too loud and his neighbours complain.

This is the extent of the submissions made by the Manager and S.M. I asked twice if there was anything further they wanted to say about this issue and they said no.

The Manager and S.M. said at the outset of the hearing that they were going to call a witness. I told them they could call their witness and they did so. K.K. joined the conference and was in the same room as the Manager and S.M. I tried to affirm K.K. He did not seem to understand me and I asked the Manager or S.M. to assist with translation if necessary. The Manager and S.M. both tried to explain my question to K.K. Eventually, I was satisfied K.K. agreed he would tell the truth and I carried on.

I asked K.K. for his evidence. The Manager and S.M. asked K.K. to explain the problem with his neighbour. K.K. mostly remained silent. K.K. did say something; however, I could not understand what he said. S.M. asked for a translator. I told S.M. that the RTB does not arrange for translators and that the Landlord needed to have arranged for this prior to the hearing if required. The Manager and S.M. then both started talking at K.K. such that it was very difficult for me to know who was speaking or what was being said. I told the Manager and S.M. that they needed to stop both talking at K.K. as it did not seem to be assisting. I gave S.M. one more opportunity to ask K.K. a question to obtain his evidence on this matter. S.M. advised K.K. had left the room. The Manager and S.M. did not seek further evidence from K.K.

I asked the Manager and S.M. three times what the illegal activity they are alleging is. Neither could provide an answer or point to any illegal activity. The Manager referred to giving the Tenant a breach letter.

The Advocate submitted that the Landlord has failed to meet their burden to prove the Notice. She pointed out that the Landlord has submitted no documentary evidence to support their position. The Tenant denied the allegations.

Analysis

The Notice was issued under section 47(1)(d) and (e) of the *Residential Tenancy Act* (the “*Act*”). The Tenant had 10 days to dispute the Notice under section 47(4) of the *Act*.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord who has the onus to prove the Notice. The Landlord also has the onus to prove service of the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties disagreed on when the Notice was served on the Tenant. Neither party submitted evidence to support their position. It is the Landlord who has the onus to prove service. The Landlord has failed to prove the Notice was served on February 28, 2019 as he has submitted no evidence to support this. Therefore, I will accept that the

Notice was served March 05, 2019. The Tenant filed the Application March 15, 2019, within the 10-day time limit set out in section 47(4) of the *Act*.

The Manager and S.M. said that the Tenant's room is too messy, the Tenant has marked the washroom with graffiti, the Tenant misbehaves with his neighbours and the staff, the Tenant yells and threatens them and his sound system is too loud causing his neighbours to complain. The Tenant denies these allegations.

It is the Landlord who has the onus to prove the Notice. The Manager and S.M. did not provide any details about the above allegations during the hearing despite being asked twice if they had anything further they wanted to say. The Landlord submitted no documentary evidence to support the grounds for the Notice such as photos, videos, complaint letters or witness statements. The Landlord did not submit a copy of the breach letter allegedly sent to the Tenant about the issues raised. The Manager and S.M. called one witness who was unable to provide any evidence in support of the grounds for the Notice. The Manager and S.M. called no further witnesses. The Manager and S.M. could not clarify what the illegal activity alleged is.

Given the lack of evidence provided, the Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Notice is cancelled. The tenancy will continue until 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 *Act*.

Dated: May 07, 2019

Residential Tenancy Branch