



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SELECT REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:30 a.m. The tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference.

As the tenant confirmed that on March 20, 2019, they received the 1 Month Notice sent by the landlord by regular mail, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. Tenant KAM (the tenant) testified that they sent the landlord a copy of the tenants' dispute resolution hearing package and written evidence by Canada Post's Priority Mail service on March 28, 2019. The tenant provided the Canada Post Tracking Number for this mailing. Based on this undisputed evidence, I find that the landlord was deemed served with these documents in accordance with sections 88, 89 and 90 of the *Act* on the fifth day after their mailing.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant gave undisputed sworn testimony that this tenancy began on April 30, 2018, at which time the tenants moved into this rental unit on the basis of a one year fixed tenancy agreement with the landlord. Monthly rent is set at \$975,00, payable in advance on the first of each month. The tenant said that a \$487.50 security deposit was paid to the landlord at the beginning of this tenancy. The tenant gave undisputed sworn testimony that the landlords have received and accepted rent payments made on the tenants' behalf for April and May 2019.

The tenants entered into written evidence a copy of the 1 Month Notice that the tenants received on March 20, 2019. In that Notice, requiring the tenants to end this tenancy by April 30, 2019, the landlord cited the following reasons for the issuance of the Notice:

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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant has caused extraordinary damage to the unit/site or property/park.

The landlord did not provide any written evidence to support the reasons stated in the 1 Month Notice .

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, as occurred in this case, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Although the tenants provided written evidence and sworn testimony at this hearing, the landlord did not. As the landlord did not attend this hearing and has not met the burden of proof required to end this tenancy for cause for the reasons stated in the 1 Month Notice, I allow the tenants' application.

Conclusion

The tenants' application to cancel the 1 Month is allowed. The 1 Month Notice is set aside and of no force or effect. This tenancy continues 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 *Residential Tenancy Act*.

Dated: May 13, 2019

Residential Tenancy Branch