



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was personally served with the tenant's application for dispute resolution and amendment package, though neither could recall on what date. I find the tenant's application for dispute resolution and amendment were served on the landlord in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The tenant's shortened version of her first name was listed on the tenant's application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the tenant's application to state the full version of her first name.

The landlord's last name on the application for dispute resolution had a minor spelling error. Pursuant to section 64 of the *Act*, I amend the tenant's application to correctly spell the landlord's last name.

Issue to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant to the landlord.

The landlord testified that he personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of May 31, 2019 (the "One Month Notice") but was not sure on what date. The tenant confirmed receipt of the One Month Notice but was not sure on what date. The first page of the One Month Notice was entered into evidence, but the second page was not.

Both parties agreed that the second page of the One Month Notice stated the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk.
- 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;
 - Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

Tenant has allowed an unreasonable number of occupants in the unit/site.

The landlord testified that the tenant has sent over different people to pay her rent and that they have told him that they live with the tenant. The landlord entered no physical evidence to support his claim.

The tenant testified that the only person who has paid rent on her behalf to the landlord is her son and that the only person living with her is her disabled grandson.

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

The landlord testified that the tenant generates lots of traffic on the road outside the subject rental property which bothers him. The landlord testified that about one year ago he caught someone stealing from his house and he saw the same person go to the subject rental property. The landlord entered no physical evidence to support his claim.

The tenant testified that there are four businesses and a taxi stand on her street and that it is the businesses and not her which produce the traffic. The tenant testified that she has no knowledge of anyone stealing from the landlord.

Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The landlord testified that a guy the tenant was subletting to who also lived in the bush climbed the fence to the subject rental property and wrecked the fence.

The tenant testified that a bear broke the fence and that she did not sublet the subject rental property.

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

The landlord testified that the tenant is a drug dealer. The landlord testified that he believes the tenant is a drug dealer because known drug users have visited the subject

rental property. No further testimony or supporting evidence was provided by the landlord regarding illegal activity or problems arising out of the alleged illegal activity.

The tenant denied being a drug dealer and denied having drug users frequent the subject rental house.

Tenant has assigned or sublet the rental unit/site without the landlord's written consent

The landlord testified that he believes the tenant is subletting the subject rental property because he has seen different people entering and exiting the subject rental property. The landlord entered no physical evidence to support his claim.

The tenant denied having any unauthorized sublets and testified that her grandson has special needs and that she has a lot of family who comes over to help with her grandson.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlord entered no physical evidence to support his claims which were all denied by the tenant. I find that the landlord has failed to prove any of the reasons to end tenancy set out in the One Month Notice. I therefore find that the One Month Notice is cancelled and of no force or effect.

Conclusion

The One Month Notice is cancelled and of no force or effect.

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: June 21, 2019

Residential Tenancy Branch