



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 a One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*.

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

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's notice of dispute resolution proceeding package. The tenant confirmed receipt of the landlord's evidence. The tenant did not submit any evidence in this matter, other than a copy of the One Month Notice. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue - Procedural Matters

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Both parties confirmed that there was no written tenancy agreement between them, however, both parties confirmed their understanding of the terms of a verbal tenancy between them as follows:

- On May 4, 2019, the tenant received keys to the basement rental unit.
- Monthly rent of \$700.00 is payable on the first of the month.
- The rental unit has access to a laundry room shared with the main floor living unit.

The One Month Notice dated June 20, 2019, submitted into evidence by the tenant, states an effective move-out date of August 1, 2019, with the following box checked off as the reason for seeking an end to this tenancy:

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

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The "Details of Cause" section of the notice states the following:

[Name of landlord] and [name of tenant] were in a personal relationship which ended, resulting in his moving into the basement suite. During this relationship, [name of landlord] developed severe mental health issues that [name of tenant] concealed from family. It was mutually understood that he was to move out by July

1, to enable her recovery. This notice formalizes the request to vacate, and represents a one month extension beyond what was agreed upon.

The tenant confirmed he received the One Month Notice served to him by posting on the rental unit door on June 20, 2019. On June 24, 2019, the tenant filed an Application for Dispute Resolution to cancel the notice.

The landlord testified that she owns the rental property, consisting of a detached home with a main floor living unit and a basement rental unit. The landlord testified that she was residing in the main floor living unit with the tenant, until the breakdown of their personal relationship, at which point she offered the tenant to move into the basement rental unit. The landlord testified that her understanding was it would be on a temporary basis and that the tenant would move out by July 1, 2019. When the landlord was concerned the tenant would not move out by July 1, 2019, the landlord issued the One Month Notice.

The tenant disputed that he had agreed to move out by July 1, 2019.

The landlord testified that she has been hospitalized for mental health illness over the past few months and has been residing with her son's family since her release from hospital. The landlord testified that she is "not comfortable" returning to live in the main floor living unit while the tenant continues to reside in the basement unit as she holds him partly responsible for her mental health illness as she feels he did not properly care for her during their relationship and hindered her children from visiting her.

Although the landlord confirmed that she and the tenant have spoken verbally and communicated through text message recently, she testified that she felt uncomfortable. The landlord confirmed that there had not been any incidents where her physical safety or the preservation of the rental property had been jeopardized by the tenant. The landlord also confirmed that police had not been involved to deal with any threats or safety concerns. The landlord stated that she considered it a threat when the tenant told her that he would be claiming his rent payments on his income tax and therefore she should ensure that she also claim the rent as income on her taxes.

The tenant testified that he thought his communication with the landlord had been "friendly" and he was agreeable to only communicating through text message and arranging a schedule for use of the laundry area to avoid contact with each other.

I provided the parties with an extended opportunity to try and come to a settlement of their dispute, however, the parties were unable to do so. As such, I proceeded to address the dispute through arbitration.

Analysis

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

The tenant received the landlord's One Month Notice on June 20, 2019. The tenant filed an application to dispute the notice on June 24, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties 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 the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

In this matter, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the grounds for issuing the One Month Notice, as explained below.

The landlord's complaint pertains to the tenant's existence at the rental unit causing her to be uncomfortable based on the memory of the issues which contributed to the breakdown of their relationship and the landlord's mental health issues. The only threat made by the tenant mentioned by the landlord pertained to reporting rental income on income taxes, and as such, I do not find that this "threat" could be interpreted as a threat to the landlord's "health, safety or lawful right".

Therefore, based on the testimony and evidence presented, on a balance of probabilities, I do not find that the tenant has “seriously jeopardized the health or safety or lawful right” of the landlord, and as such the landlord has not proven the grounds for ending this tenancy. The tenant’s application is successful and the landlord’s One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord’s One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated June 20, 2019 is 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: August 13, 2019

Residential Tenancy Branch