



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 tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 19, 2019 ("1 Month Notice"), pursuant to section 47.

The two tenants, tenant CN ("tenant") and "tenant AM," the tenants' advocate and the landlord 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 tenants confirmed that their advocate had permission to speak on their behalf. This hearing lasted approximately 27 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence package.

The tenant confirmed receipt of the landlord's 1 Month Notice on June 19, 2019. The landlord confirmed that the notice was served to the tenants on the above date. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on June 19, 2019.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Background and Evidence

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

The tenant confirmed that this tenancy began on November 2, 2018 with the former landlord. The landlord confirmed that he purchased the rental unit and continued the tenancy by signing a written tenancy agreement with the tenants commencing on January 2, 2019. The tenants denied signing a tenancy agreement with the landlord and said that they did not receive a written copy of the agreement provided by the landlord for this hearing.

Both parties agreed to the following facts. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 was paid to the former landlord and transferred to the current landlord, who continues to retain this deposit. The tenants continue to reside in the rental unit.

Both parties agreed that the landlord issued the 1 Month Notice with an effective date of July 31, 2019, for the following reasons:

- *Tenant is repeatedly late paying rent*
- *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;*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
 - *put the landlord's property at significant risk;*

The landlord stated that the tenants paid rent late, after the first day of the month when it is due, three times on March 2, 2019, April 2, 2019 and May 2, 2019. The landlord explained that he received complaints from strata regarding noise by the tenants, drug

use, extra occupants living in the unit, and fire damage. The landlord claimed that the tenants had one extra occupant in the unit on two different occasions.

The tenant testified that the tenants did not pay rent late except one time in January 2019, when it was paid on the second day of that month, because the first day fell on a statutory holiday. The tenant claimed that she has rent receipts showing that the tenants paid rent on time each month. The tenant stated that only one extra person was living in the rental unit in January and February 2019, and the landlord charged the extra person \$50.00 per week for staying there. The landlord agreed about the extra charge but claimed that the occupant was only entitled to stay for one month, not two.

The tenant maintained that she received two warning letters from the landlord on February 6 and 12, 2019, regarding slamming noisy doors on the patio. The tenant claimed that she modified her behaviour and spoke to her neighbours and they said that there were no more noise complaints against her. The tenant stated that she received another warning letter regarding leaving a pot boiling on the stove with pea soup, which she said she did accidentally and went to the doctor, and tenant AM did not know how to turn off the stove. The tenant explained that the landlord's manager came in and turned off the stove, the pot boiled dry, and there was no smoke problem or fire damage. The tenants provided a letter, dated July 31, 2019, from someone they said inspected the unit, indicating that there were no smoke issues inside the rental unit. The tenant maintained that the tenants do not use drugs, aside from medically prescribed drugs.

Analysis

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on June 19, 2019 and filed their application to dispute it on June 27, 2019. Accordingly, I find that the tenants' application was filed within the ten day limit under the *Act*. Where tenants apply to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

On a balance of probabilities and for the reasons stated below, I find that the landlord did not issue the 1 Month Notice for valid reasons.

Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..." The landlord failed to provide

documentary proof that the tenants paid rent late three times during this tenancy. The landlord claimed that he called the tenants and picked up the rent late. The landlord did not provide copies of rent receipts provided to the tenants. It is the landlord's burden of proof on a balance of probabilities to show that the tenants paid the rent late. The tenants agreed that they paid rent late only once, which is not a pattern of behaviour of three times, as per Residential Tenancy Policy Guideline 38.

I do not find one extra person, living in the rental unit, for which the landlord made an additional profit in rent, to be an unreasonable number of occupants. This occurred in January and February 2019, months before the landlord issued the 1 Month Notice in June 2019, and this occupancy ended after those two months. I find that this was not a pattern of ongoing behaviour or a priority for the landlord.

During the hearing, the landlord did not go through any documentary evidence or reference any dates or specific information regarding the remainder of his claims about drug use, fire damage and noise. I provided the landlord with an opportunity to explain his claims, to reference relevant documents, and he chose not to do so.

I accept the tenant's candid testimony that she resolved the issue about the slamming of doors referenced in the landlord's two caution notices. I also accept the tenant's evidence about the mistaken pot left boiling on the stove, that the landlord resolved. I find that this one incident is not a pattern of behaviour showing significant risk to the landlord's property, significant interference, unreasonable disturbance, or serious jeopardy to health, safety or lawful rights of the landlord or other occupants.

Accordingly, I allow the tenants' application to cancel the landlord's 1 Month Notice. The landlord is not entitled to an order of possession.

Conclusion

The tenants' application to cancel the landlord's 1 Month Notice is allowed. The landlord is not entitled to an order of possession.

The landlord's 1 Month Notice, dated June 19, 2019, is cancelled and of no force or effect.

This tenancy continues 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 19, 2019

Residential Tenancy Branch