



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's 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).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Landlord DD (the landlord) testified that they posted the 1 Month Notice on the tenant's door on June 30, 2019. As the tenant said that they received that Notice on July 2, 2019, I find that the tenant was duly served with the 1 Month Notice on July 2, 2019, in accordance with section 88 of the *Act*.

The tenant testified that they were unclear as to when they were to retrieve the Notice of Dispute Resolution Hearing from the Residential Tenancy Branch (the RTB). On this point, the RTB's records show that the tenant picked up the dispute resolution hearing documents on August 22, 2019. The tenant testified that they tried to hand the dispute resolution hearing package, including copies of their application and the Notice of Hearing to the landlord's representatives several times within the past ten days, but on each occasion the landlord's representatives refused to accept these documents. The landlord testified that they received notice of this hearing from the RTB on July 12, 2019, and waited until August 15, 2019 to obtain a copy of the Notice of Dispute Resolution Hearing and the tenant's application from the RTB. Although I am not satisfied that the tenant's dispute resolution hearing package was properly served to the landlord in accordance with section 89 of the *Act* or within the time frame established pursuant to the RTB's Rules of Procedure for servicing such documents, based on the

sworn testimony of the parties and in accordance with paragraph 71(2)(c) of the *Act*, I find that these documents were sufficiently given to the landlord for the purposes of this *Act*. I do so as I am satisfied that this commercial landlord had received notification of this matter as long ago as July 12, 2019, and received the relevant documents by August 15, 2019, well in advance of this hearing.

Other than the tenant's application, neither party provided any written evidence for this hearing, nor did they choose to call witnesses. Most importantly, neither party even saw fit to provide the RTB with a copy of the 1 Month Notice, the primary issue in dispute with respect to this application.

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

This tenancy for a room in a single occupant rental unit in a hotel commenced in June 2018. Although there was initially a three month fixed term, the tenancy has continued since the end of that first term as a month-to-month tenancy. Monthly rent is set at \$450.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$225.00 security deposit paid when this tenancy began.

Although neither party entered into written evidence a copy of the 1 Month Notice, the landlord gave undisputed sworn testimony that the 1 Month Notice was on a standard RTB form and that it sought an end to this tenancy by July 30, 2019 for the following reasons identified on that Notice:

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

- *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.*

I noted at the hearing that the earliest that a 1 Month Notice posted on the tenant's door on June 30, 2019, and received by the tenant on July 2, 2019, could have taken effect was August 31, 2019. The parties agreed that the tenant has paid and the landlord has

received the tenant's rent payments for August and September 2019. Based on that undisputed sworn testimony, I advised the parties that the landlord's acceptance of these payments enabled the tenant to remain in this rental unit until at least September 30, 2019.

The tenant's application to cancel the 1 Month Notice maintained that concerns that the landlord had raised about guests arriving beyond the time frames established by the hotel, concerns about the hiding of illegal drugs within the building, and about the tenant contravening the hotel's rules regarding the keeping of a dog in the facility were unfounded.

At the hearing, the landlord testified that the tenant was responsible for a dangerous incident that occurred at about 11:00 p.m. on May 16, 2019. At that time, two men were waiting outside the doors of this hotel for the tenant with bicycle chains, apparently intent on injuring the tenant. The landlord said that they left when the landlord advised them that the landlord worked for this hotel and was not the tenant, the person they were seeking. The landlord said that this incident put his safety in danger, as the landlord believed that the men were trying to even some type of drug-related dispute between the tenant and these men.

Although both of the landlord's representatives at this hearing testified that written warnings were given to the tenant about the behaviours and actions that the tenant had been committing that could lead to the end of this tenancy for cause, neither representative could identify when these occurred or the contents of these warnings. When questioned on this matter, the landlord read from notes from the hotel's "logbook" that the landlord had created with respect to the above incident. When it appeared that the landlord was interjecting their own comments and narrative into what was written in that logbook, the landlord provided a different account of what was written in that logbook. The other landlord representative at the hearing said that there were written notices provided, which could be provided to the RTB after this hearing was completed. This landlord representative did not have these written notices available, so could not read the contents of these warnings into the sworn testimony for this hearing. This landlord representative said that verbal warnings had been given to the tenant with respect to the activities that the landlord had identified as reasons for ending this tenancy for cause.

The tenant said that no written warnings had been given by the landlord's representatives for the issues that the landlord identified for ending this tenancy for

cause. The tenant provided undisputed sworn testimony that they had discontinued the activities that the landlord considered objectionable since receiving the landlord's 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, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice. Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

In this case, neither party provided any written evidence to support their positions, other than the brief comments included in the tenant's application to cancel the 1 Month Notice. Although there is undisputed sworn testimony as to the contents of the 1 Month Notice, the landlord provided no written evidence or sworn testimony that anyone has been charged with or has committed illegal activity, a key component of the second of the reasons cited in the landlord's 1 Month Notice.

When issues arise during a tenancy that may lead to a landlord's issuance of a 1 Month Notice to End Tenancy for Cause, landlords generally provide a tenant with a written warning as to the landlord's concerns. In such written warning letters, tenants are put on alert that unless they take corrective measures, they could be issued a 1 Month Notice and would be required to vacate the rental unit.

In this case, although the landlord's representatives claimed that such a written warning was provided to the tenant, they produced no details as to when this warning occurred or what was included in the warning. Normally, an arbitrator would expect that a landlord would have included copies of written warnings provided to a tenant in advance of the issuance of a 1 Month Notice to a tenant as part of the landlord's written evidence package. In this case, I was willing to exercise more latitude to the landlord in providing written evidence to support their position due to the problems created by the provision of notice of this hearing to the landlord. However, given that the landlord knew weeks in advance of this hearing that they would be expected to produce evidence to support their issuance of the 1 Month Notice, I would have expected the landlord's

representatives to at a minimum have accessed any written notices to the tenant such that the details of these warnings could have been entered into sworn testimony for this hearing. If these documents truly existed, it was incumbent on the party advancing the existence of these documents to support their position to have at least located these documents in advance of the hearing so that they could read their contents into the oral record for this hearing. This did not occur. The assurance by both landlord's representatives that they could locate these documents **after** the hearing and send them to the RTB does not meet the landlord's responsibility to have the necessary documents available to support their position at the time of the hearing. Only in very unusual circumstances, would an arbitrator accept the submission of written evidence after the completion of a hearing.

I find that the absence of sworn testimony from the landlord's representatives as to the details of the warning letters they referenced supports the tenant's assertion that no such written warnings were provided to the tenant about the issues giving rise to the landlord's attempt to end this tenancy for cause for the reasons cited in the 1 Month Notice.

Based on a balance of probabilities, I find that the landlord has fallen far short of establishing that the reasons stated on the 1 Month Notice constituted sufficient grounds to end this tenancy for cause. For this reason, I allow the tenant's application to cancel the 1 Month Notice.

Conclusion

The tenant's application to set aside the landlord's 1 Month Notice is allowed, with the effect that the 1 Month Notice is set aside. 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: September 05, 2019

Residential Tenancy Branch