



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated July 3, 2019 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to represent it and the owner of the rental unit, as an agent at this hearing. This hearing lasted approximately 35 minutes.

The landlord confirmed receipt of the tenant's 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 tenant's application and the tenant was duly served with the landlord's evidence package.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on July 3, 2019. The landlord confirmed that the notice was served to the tenant on the above date in person. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on July 3, 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?

Is the tenant entitled to recover the filing fee for this application?

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 tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 28, 2018 for a one-year fixed term ending on December 31, 2019, after which it becomes a month-to-month tenancy. Monthly rent in the amount of \$2,700.00 is payable on the first day of each month. A security deposit of \$1,350.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

Both parties agreed that the landlord issued the 1 Month Notice with an effective date of August 30, 2019. Neither party provided a copy of page 2 of the notice, indicating the reasons for why it was issued. Both parties agreed at the hearing that the 1 Month Notice was issued for the following reasons:

- *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 claimed that she received a call from the rental building strata manager on the day after the Canada Day long weekend in 2019, that there was an altercation involving the tenant. She said that she was not present but was informed that two elevators were locked off on the 11th floor of the rental building twice that day, where the tenant resides. She stated that the elevator company had to come twice to fix the

problem. She maintained that she has no proof that the tenant caused the elevator damage, but she thinks he did because he works for another elevator company, so he has the knowledge to do so. She explained that the strata fined the owner of the rental unit \$1,600.00 for the damage and repairs and that the tenant has failed to pay it. She said that the strata wants the tenant to vacate the rental unit and that she has an obligation as a property manager to request an order of possession against the tenant. The landlord confirmed that the strata did not want to appear at this hearing to provide testimony.

The landlord testified that the tenant was looking for his bikes on the day of the incident and that the landlord removed them and stored them elsewhere because the tenant used the wrong storage area. She stated that the tenant was verbally abusive and pushed the weekend building manager. She said that the tenant left abusive voicemails for the building manager about the bikes. She explained that the strata manager refuses to deal with the tenant because of his behavior. She claimed that she went and got the tenant's bikes and returned it to him within a few days of the elevator incident.

The tenant testified that on the day of the incident, he heard a knock on his rental unit door from the building caretaker. He said that the caretaker told him that the elevator on the tenant's floor was opening and closing, so the tenant told the caretaker to shut it off or it would burn out. The tenant said that the caretaker went with him to look for his bikes and he would not have done so if he pushed the caretaker. The tenant denied pushing the caretaker. The tenant said that he took the elevator back up to his rental unit, after he did not find his bikes.

The tenant said that he called the RTB and was told to write the landlord a letter to get his bikes back because their retention of same was illegal. The tenant explained that he wrote a letter giving strata 24 hours to give his bikes back. He claimed that after he wrote the letter, strata blamed him for causing the elevator incident and issued fines. The tenant stated that he did not cause the elevator incident and he has never met the strata manager in person. The tenant said that he refused to pay strata fines.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on July 3, 2019 and filed his application to dispute it on July 10, 2019. Accordingly, I find that the tenant's application was filed within the

ten-day limit under the *Act*. Where a tenant applies 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.

For the below reasons and on a balance of probabilities, I find that the landlord did not issue the 1 Month Notice for valid reasons. I find that the landlord has insufficient proof that the tenant caused damage to the elevators. The tenant denied causing the damage; he only made a suggestion to the building caretaker when he was asked what to do about the elevator issue. The landlord agreed that she had no proof of the tenant causing elevator damage and that she assumed he caused it because he works for an elevator company. I find that the landlord has insufficient proof that the tenant pushed the caretaker and verbally assaulted him or anyone else. None of these people showed up at the hearing on behalf of the landlord to testify about what happened and the tenant denied these events.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord is not entitled to an order of possession. As the tenant was successful in this application, I find that he is entitled to recover the \$100.00 filing fee.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated July 3, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to reduce his next monthly rent payment due to the landlord for this rental unit and this tenancy by \$100.00 for recovery of the application filing fee.

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 12, 2019

Residential Tenancy Branch