



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUPERMEN PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The Tenant and an agent (the “Tenant”) were present for the hearing as was an agent for the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package but did not receive any evidence from the Tenant. The Tenant confirmed that a letter submitted as evidence was not served to the Landlord. The Tenant also submitted a copy of the One Month Notice which the Landlord has a copy of.

The Tenant received some complaint letters from the Landlord when the One Month Notice was served but did not receive any evidence from the Landlord for the hearing. The letters were not submitted as evidence to the Residential Tenancy Branch which was confirmed by the Landlord who stated her belief that they were received due to being attached to the One Month Notice.

As stated by the *Residential Tenancy Branch Rules of Procedure*, evidence to be relied upon at the hearing must be submitted to the Residential Tenancy Branch as well as served to the other party. Therefore, the evidence of the parties is not accepted and will not be included in the decision with the exception of the One Month Notice which was submitted into evidence by both parties.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

The Application for Dispute Resolution was initially filed to dispute a One Month Notice to End Tenancy for End of Employment. However, it was clarified during the hearing that this was an error and that it was a One Month Notice to End Tenancy for Cause that was in dispute. Therefore, pursuant to Section 64(3)(c) of the Act, the application was amended.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in 2015. Current monthly rent is \$600.00, and the Tenant paid a security deposit of \$300.00 at the start of the tenancy.

The Landlord testified that the One Month Notice was served to the Tenant in person on August 17, 2019. However, she stated that she realized it had not been signed and therefore signed a copy and served it to the Tenant again in person later on August 17, 2019. The Landlord submitted the signed One Month Notice into evidence.

The Tenant confirmed receipt of the One Month Notice although was unsure as to the day. Although the Tenant only had a copy of the unsigned One Month Notice in front of them at the hearing, they did not dispute that a signed copy may have been served as well.

The One Month Notice was submitted as evidence and states the following as the reasons for ending the tenancy:

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

- 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

Further details were provided on the One Month Notice as follows:

I have received multiple complains about [the Tenant] disturbing the tenants around him at all times of the day and night. [The Tenant] has been spoken to by management multiple times and is still continuing to disturb and put tenants and guest to the building in danger by throwing glass tables and other objects off his balcony. I have attached letters of complaint from tenants around him.

The Landlord provided testimony that the issues with the Tenant have been ongoing and have resulted in notices to end tenancy being served in the past. She stated that the Tenant is loud and disturbing others which leads to regular complaints from neighbours. The Landlord also stated that the Tenant has been throwing furniture off his balcony to an area below where people are walking by.

The Landlord also stated that the Tenant has a dog which he did not have permission to have in the rental unit and did not pay a pet damage deposit for. She stated that there are ongoing issues with the Tenant not picking up after the dog.

The Landlord referenced flooding in the Tenant's rental unit which has resulted in water coming down through the floors on three occasions. She also stated that the Tenant's deck is filled with garbage and furniture, despite the Landlord being notified that this would be cleaned up.

The Tenant stated that some of the issues have not been brought forth previously and therefore this is the first they are hearing of them. They stated that they are aware of two incidents when something fell off the Tenant's balcony but denied that furniture is

being thrown off. The Tenant stated that he is currently in the process of cleaning up the items on the balcony.

Regarding the dog, the Tenant stated that he cleans up after his dog and was not aware of any complaints until the hearing. He also noted that he talks loudly due to a hearing issue but has worked to tone this down since becoming aware of the issue.

The Tenant stated their position that as the complaints are coming from the same neighbours, they may be due to an interpersonal issue between the Tenant and one of the neighbours.

The Tenant testified that there were issues with the bathtub overflowing but stated that this is in part due to plumbing issues which have not been addressed by the Landlord.

Analysis

As stated in Section 47(4) of the *Act* a tenant has 10 days to dispute a One Month Notice. As the One Month Notice was served to the Tenant in person on August 17, 2019 and the Tenant applied for dispute resolution on August 21, 2019, they applied within the timelines allowable under the *Act*. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by Rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

While the Landlord provided testimony regarding concerns with the actions and behaviours of the Tenant, the Tenant was not in agreement as to the issues. When two parties to a dispute resolution proceeding provide differing, but equally plausible testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to support their version of events.

However, in the absence of sufficient evidence such as witness accounts, complaint letters, photos or other such evidence, I am not satisfied that the Landlord has met the burden of proof to support their testimony regarding the issues that led to service of the One Month Notice.

Therefore, I find that the Tenant's application to cancel the notice is successful. The

One Month Notice dated August 17, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The One Month Notice dated August 17, 2019 is cancelled and of no force or effect. 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: October 24, 2019

Residential Tenancy Branch