



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK
LTD. 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.

As the tenant confirmed that they received the landlord's 1 Month Notice posted on their door by the landlord on September 25, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received copies of the tenant's dispute resolution hearing package sent by the tenant by registered mail on October 3, 2019, and the tenant's written evidence sent by the tenant by registered mail on October 10, 2019, I find that the landlord was duly served with these packages in accordance with sections 88 and 89 of the *Act*. Although Landlord MH (the landlord) said that they had some of their own written evidence from other tenants in this rental building, the landlord did not enter this material into written evidence for this hearing.

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 began on or about October 1, 2014, as a one year fixed term tenancy. The tenancy has continued after the expiration of that term as a month-to-month tenancy. Current monthly rent is set at \$904.60, payable in advance on the first of each month.

The landlord's 1 Month Notice seeking an end to this tenancy by October 29, 2019 identified the following reasons for ending this tenancy for cause:

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;*

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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

At the hearing, I noted that the incorrect effective date on the 1 Month Notice automatically corrects to October 31, 2019, the earliest date that the Notice could take effect.

At the hearing, the landlord was unable to identify any clear incidents of illegal activity arising out of the tenant's rental unit that could lead to an end to this tenancy for the last two reasons cited on the landlord's 1 Month Notice.

The landlord confirmed the tenant's assertion that the landlord has not issued any warning letter to the tenant, alerting the tenant that a continuation of behaviours that the landlord finds problematic could potentially lead to the issuance of a 1 Month Notice and end this tenancy for cause. The landlord said that they did send the tenant a text message warning them of behaviours that the landlord found unacceptable. The tenant denied having received any such text message.

The landlord testified that three of the other four tenants in this four unit rental building have registered complaints with the landlord about the tenant's actions and behaviours.

Although the landlord has documents from each of these other tenants, the landlord said that they are all frightened of having their names identified to the tenant, and were unwilling to allow these signed letters to be entered into written evidence. The landlord also said that none of the other tenants were thus far willing to attend a teleconference hearing to provide sworn testimony with respect to this tenancy.

The landlord stated that the problems of noise, disruption and unacceptable behaviours involving the tenant have continued unchecked and that they intend to issue a new Notice to End Tenancy for incidents that have occurred since issuing the September 25, 2019 Notice.

The tenant denied causing interference or disturbance to other tenants. They maintained that for a two day period an ex partner of theirs appeared at their rental unit and with the assistance of the police, this individual has been remove and is not any continuing problem for tenants in this building.

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.

The landlord provided no examples of illegal activity that was being undertaken on the rental premises or for which the tenant was responsible.

As I noted at the hearing, landlords often issue warning letters to tenants advising them of behaviours that landlords and other tenants in their building find objectionable, and give such tenants a time frame whereby such behaviours are to cease. In these letters, tenants are warned that a failure to abide by the landlord's request might lead to the issuance of a 1 Month Notice and could lead to the ending of their tenancy. In this case, the landlord has provided no evidence of any such written warning to the tenant. While the landlord claimed to have sent the tenant a text message, the landlord did not produce a copy of that text, nor even enter into sworn testimony the contents of that text message.

Without signed written evidence from other tenants in this building or their attendance as witnesses at this hearing, the landlord relied solely on the acceptance of their own sworn testimony and that of the other landlord representative, their family member, that complaints had been lodged by others who claim to have been significantly interfered with or unreasonably disturbed by the tenant or their guests. These allegations were denied by the tenant, who maintained that it was the landlord who was harassing the tenant, including a late night telephone call when the landlord adopted a threatening demeanour towards the tenant.

Under these circumstances, I find on a balance of probabilities that the landlord has fallen far short of establishing that the reasons cited in the 1 Month Notice constitute sufficient grounds to end this tenancy for cause. I allow the tenant's application to cancel the 1 Month Notice.

Conclusion

The tenant's application is allowed and the 1 Month Notice 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 31, 2019

Residential Tenancy Branch