



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX COMMERCIAL SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 06, 2019 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated August 27, 2019 (the "Notice").

The Tenant appeared at the hearing with the Advocate. Nobody attended the hearing for the Landlord. The hearing process was explained to the Tenant and Advocate who did not have questions when asked. The Tenant provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and Tenant's evidence.

The Advocate advised that the hearing package and some evidence were sent to the Landlord by registered mail at the address on the Notice. The Advocate provided Tracking Number 1 for this package. I looked this up on the Canada Post website which shows the package was delivered and signed for September 16, 2019.

The Advocate advised that a second package of evidence was sent to the Landlord by registered mail at the address on the Notice. The Advocate provided Tracking Number 2 for this package. I looked this up on the Canada Post website which shows the package was delivered and signed for October 29, 2019.

Based on the undisputed submissions of the Advocate and the Canada Post website information, I find the hearing package and evidence were served on the Landlord in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I find the Landlord received the hearing

package and some evidence September 16, 2019, in sufficient time to prepare for, and appear at, the hearing.

I also note that the Landlord submitted evidence for this hearing on September 17, 2019. This supports that the Landlord received the hearing package and some evidence September 16, 2019.

As I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Landlord.

Rule 7.4 of the Rules of Procedure (the "Rules") states:

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I decline to consider the evidence submitted by the Landlord in the absence of an agent for the Landlord appearing at the hearing to present and explain it.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

The Notice was submitted as evidence. The grounds for the Notice are that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and put the Landlord's property at significant risk.

The Tenant testified that he received the Notice August 27, 2019. The Application was filed September 06, 2019.

The teleconference started at 9:30 a.m. and ended around 9:44 a.m. Nobody appeared for the Landlord during this time.

Analysis

The Notice was issued pursuant to section 47 of the *Act* which states that a tenant has 10 days to dispute a notice to end tenancy issued under that section.

I accept the undisputed testimony of the Tenant and find he received the Notice August 27, 2019. As stated, the Application was filed September 06, 2019. The Tenant disputed the Notice within the 10-day time limit set out in section 47(4) of the *Act*.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice.

Here, the Landlord did not appear at the hearing to provide evidence to prove the grounds for the Notice. I decline to consider the Landlord's documentary evidence in the absence of an agent for the Landlord appearing to present and explain it. In the absence of evidence from the Landlord, the Notice has not been proven. Therefore, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue 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 *Act*.

Dated: November 14, 2019

Residential Tenancy Branch