



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNSET PARK APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On November 18, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing with S.M. attending as an advocate for the Tenant. D.V. attended the hearing as the Landlord's agent. All in attendance provided a solemn affirmation.

The Tenant confirmed that the Landlord was served the Notice of Hearing package by hand on November 18, 2019 and D.V. confirmed receipt of this package. As per this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing package.

The Tenant advised that he did not serve the evidence he submitted to the Residential Tenancy Branch to the Landlord. In addition, he stated that there was evidence he wanted to submit; however, his advocate refused to allow him to do so. S.M. stated that this was categorically false, that she did not advise him not to submit evidence, and that she did not prevent him from doing so. She then stated that she was no longer acting as an advocate on his behalf and exited the hearing at 10:05 AM. As the Tenant did not serve his evidence to the Landlord, this evidence was excluded and will not be considered when rendering this decision.

D.V. confirmed that the Tenant was served with the Landlord's evidence on or around December 5, 2019 by registered mail and the Tenant confirmed receipt of this package. As per this undisputed testimony, as this evidence was served pursuant to the

timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was served with the Landlord's evidence. As such, I have accepted this evidence and will consider it when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's One Month Notice to End Tenancy for Cause dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2014 and that rent was currently \$809.00 per month, due on the first day of each month. A security deposit of \$347.50 and a pet damage deposit of \$347.50 were also paid.

D.V. advised that the Notice was served to the Tenant by being posted to his door on November 13, 2019 and the Tenant confirmed that this was received. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed

another occupant or the landlord” and the “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.” The effective date on the Notice was noted as December 31, 2019.

Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The One Month Notice to End Tenancy for Cause of November 13, 2019 is cancelled and of no force or effect.
2. The Tenant and Landlord agreed that the Tenant will have possession of the rental unit but must vacate the rental unit by **February 29, 2020 at 1:00 PM.**
3. February 2020 rent must be paid in full, as per the tenancy agreement.
4. The Tenant agreed to live in the rental unit peacefully and not cause any disturbances amongst the other residents or staff of the building.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of November 13, 2019 to be cancelled and of no force or effect.

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: January 9, 2020

Residential Tenancy Branch