



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlords were served with the notice of hearing package via Canada Post Registered Mail on December 15, 2019. The tenant also stated that a copy of the tenant's evidence, (a 1 month notice dated November 28, 2019 was slipped under the landlord's office door with an additional copy of the notice of hearing package on December 15, 2019. I accept the undisputed affirmed evidence of the tenant and find that the landlords were sufficiently served as per sections 88 and 89 of the Act.

Although the landlord failed to attend the hearing, I find that the landlord is deemed sufficiently served as per section 90 of the Act.

During the hearing the tenant clarified that the second named landlord is only an agent and that that named party can be removed from the application and the style of cause.

The conference call hearing concluded in the absence of the landlord after 14 minutes.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided undisputed affirmed testimony that on November 28, 2019, the landlord served the tenant with the 1 Month Notice dated November 28, 2019 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of January 1, 2020 and that it was being given as:

- the tenant or 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 details of cause state:

Resident harassed another tenant on the property, witnessed by a neighbor

Police File #19-41747

Created Risk to property and tenants by propping doors open in secure building after hours

Consistent noise complaints

[Reproduced as written]

The tenant disputes the landlord's notice.

Analysis

Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The landlord has set out in the 1 Month Notice, among other reasons, that the tenant has significantly interfered

with or unreasonably disturbed another occupant or the landlord of the residential property.

Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Subparagraph 47(1)(d)(iii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has put the landlord's property at significant risk.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The landlord has not provided any evidence that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or the tenant or person permitted on the residential property by the tenant has put the landlord's property at significant risk.

I find that the landlord has failed to prove, on a balance of probabilities that the tenant has caused any issues in relation to the above noted reasons for cause as provided on the 1 month notice dated November 28, 2019. As such, the tenant's application is granted and the 1 Month Notice dated November 28, 2019 is set aside and cancelled. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted.

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: February 06, 2020

Residential Tenancy Branch