



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sherlock Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

At the outset of the hearing OM confirmed that she is agent for the landlord. As neither party was opposed, the name of the landlord as indicated in the tenancy agreement was added to the application.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As the tenant confirmed receipt of the landlord's evidentiary materials, I find the tenant duly served with the landlord's evidentiary materials in accordance with section 88 of the *Act*. The tenant did not submit any written evidence for this hearing.

The tenant confirmed that he was served with a 1 Month Notice to End Tenancy for cause dated January 30, 2020, which was posted on his door the same date. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on February 2, 2020, 3 days after posting.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on March 15, 2014, with monthly rent currently set at \$970.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$412.50, which the landlord still holds.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on January 30, 2020 indicating the following grounds:

1. The tenant has allowed an unreasonable number of occupants in a rental unit;
2. The tenant or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. 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;
4. The tenant or a person permitted on the property by the tenant have put the landlord's property at significant risk;
5. 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 landlord testified that they are seeking the end of this tenancy as the tenant has allowed his guest to stay in his rental unit without the permission of the landlord. In addition, the landlord testified that they have received numerous complaints from other tenants about the tenant's guest smoking in the non-smoking building. The landlord is also concerned that the use of illegal drugs on the property.

The landlord included a copy of a rental application for the tenant's guest dated May 2, 2019, which was never approved by the landlord. The landlord included several warnings issued to the tenant about his guest and smoking on the property. The landlord testified that the tenant's guest indicated on the application that she is a smoker, and that the landlord and other tenants can smell the smoke from the hallway.

The tenant disputes that his friend resides in the rental unit with him, or that she smokes on the property. The tenant testified in the hearing that there are multiple smokers in the building who smoke inside their rental units, and that the landlord has made false allegations against him such as complaints about him making noise when he was away. The tenant testified that his friend filled out the rental application at the request of the landlord to appease her, but that she lives with her aunt at another residence.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The landlord served the tenant with the 1 Month Notice on January 30, 2020, by way of posting the notice on the door. In accordance with section 90 of the *Act*, the tenant is deemed served with the notice on February 2, 2020, 3 days after posting. The tenant filed for dispute resolution on February 6 2020. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

The landlord indicated on 1 Month Notice that "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" as one of the reasons for why they wish to end this tenancy.

RTB Policy Guideline #32 speaks to the meaning of "Illegal Activity", and what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the

landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

I have considered the evidentiary materials submitted by the landlord, as well as the witness testimony in this hearing. As stated above, the burden of proof falls on the landlord to support their claim. In this case the onus is on the landlord to demonstrate that the tenant's behaviour would be considered illegal, and whether this illegal activity is serious enough to warrant the termination of this tenancy.

While the landlord and other tenants may believe that the tenant or his guests have engaged in illegal activity, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant or his guest has engaged in any illegal activity that warrants the termination of this tenancy.

The landlord testified that the tenant or his guest have been smoking on the property despite the fact that this is a non-smoking building. In light of the conflicting testimony, I find that the landlord has failed to provide sufficient evidence to support that the tenant or his guest have smoked inside the building or on the balcony. As this is a multi-unit building, with many occupants, I find that the landlord has failed to provide sufficient evidence to support that the smoke originated from the tenant's suite, or was due to the tenant or his guest smoking on the property.

Lastly, the landlord testified that the tenant has allowed an authorized occupant to reside there with him. The tenant disputed this, stating that she was simply a guest, and that she had filled out an application to appease the landlord. I find that the tenant provide a credible explanation for why the application was filled out, and furthermore I find that the existence of an application does not sufficiently support that the applicant had moved in. In light of the disputed testimony, I find that the landlord failed to provide sufficient evidence to support that the tenant has allowed an additional occupant to reside there with him.

I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of grounds provided on the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

As the tenant was successful in his application, I allow the tenant to recover the filing fee for this application.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. The 1 Month Notice of January 30, 2020 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount.

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: April 17, 2020

Residential Tenancy Branch