



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 a One Month Notice to End Tenancy For Cause, pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

Preliminary and Procedural Matters – Late Evidence of Respondent

Rule 3.15 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires copies of all of the respondent's evidence to be received by the applicant and the Branch not less than 7 days before the hearing.

The tenant raised an issue with the service of the landlord's evidence in support of the application. The tenant submits the landlord's evidence was only received 2 days before the hearing. The tenant submits he has not had sufficient time to review the landlord's evidence to prepare a response. The landlord acknowledged the evidence was only sent to the tenant 2 days prior. The landlord provided no explanation for serving the evidence so late. I find that the tenant has been prejudiced by the late serving of evidence. The matter involved a Notice to End Tenancy and aside from the Notice itself, the tenant was not provided with any details or evidence in support of the Notice being issued. The landlord's evidence was therefore not accepted or considered in this decision.

Issues

Should the landlord's One 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 from the landlord?

Background and Evidence

The tenancy began on July 1, 2017.

The landlord served the tenant with a One Month Notice on February 1, 2020. The One Month Notice was issued on the following ground(s):

- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,
- the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

The landlord testified the tenant has failed to adhere to the tenancy agreement. The landlord testified that the boyfriend of the tenant's caretaker is noisy and disruptive and affecting the quiet enjoyment of the tenants in the unit below. The landlord testified that the caretaker has also failed to complete an application for tenancy. The landlord submits the tenant has sublet the unit by allowing other people not on the contract to reside there.

The tenant confirmed that he is still residing in the unit and that he has not sublet the unit.

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 presented no evidence of illegal activity which would justify cause to issue the One Month Notice under this ground. The tenant has not sublet or assigned the tenancy agreement as he still resides in the unit.

I find that the landlord did not provide sufficient evidence to support the issuance of the One Month Notice on the above grounds. The One Month Notice dated January 8, 2020 is hereby cancelled.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's One Month Notice, dated January 8, 2020, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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: April 17, 2020

Residential Tenancy Branch