



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN ROOF
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 26, 2020. The matter was set for a conference call.

Two property Manager’s (the “Landlord”), the Tenant and the Tenant’s advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Should the Notice dated February 26, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord testified that the tenancy began on January 1, 2018, and that this rental unit is a subsidized unit, with the Tenant currently paying rent in the amount of \$493.00. The Landlord testified that at the outset of the tenancy, the Tenant paid a \$500.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on February 26, 2020, by posting it to the Tenant's door. The Tenant and the Landlord provided a copy of the Notice into documentary evidence.

The Notice states that the Tenant must move out of the rental unit by March 31, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has been causing problems at the rental property and that they had been spoken many times regarding behaviour. The Landlord testified that on February 16, 2020, the Associate Manager was called to deal with an incident between the Tenant and another occupant of the rental property, in which the police had been called. The Landlord testified that 12 police officers had attended the rental property that day, including a SWAT team, and that when the Associate Manager arrived on scene, police had detained the Tenant. The Landlord submitted a witness statement from the Associate Manager into documentary evidence.

The Landlord testified that the police had attended due to a report that the Tenant had threatened the other occupant with a knife but that the situation had been deescalated by police, the Tenant was released, and no charges were filed. The Landlord testified that due to the illegal action of threatening a fellow occupant of the rental property, they feel it is necessary to end the Tenant's tenancy for the protection staff and the other occupants of the rental property.

The Tenant testified that they had not threatened anyone with a knife and that they did not know why the other occupant had called the police that day. The Tenant testified that she had a small paring knife in her hand then she answered the door to the police, but that was due to her being in the process of peeling potatoes when they knocked.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy dated February 26, 2020, on February 27, 2020, the date they wrote on their application for dispute resolution as the date they received the notice. Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenant had until March 8, 2020, to file an application to dispute this Notice. I have reviewed the Tenant application for dispute resolution, and I find that the Tenant filed the application on March 6, 2020, within the statutory time limit.

The reason for ending the tenancy checked off within the Notice is as follows:

- *Tenant or 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 or the Landlord*

Details of Cause: "Threaten a tenant with a knife"

I accept the agreed-upon testimony of these parties that the police did attend the rental property on February 16, 2020, and that the Tenant had been detained by the police on that date then was released without charge.

During the hearing, I heard contradictory testimony from both parties regarding the presence of a weapon on February 16, 2020, and whether or not the Tenant had threatened someone during that incident.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case that is the Landlord.

After careful review of the Landlord's documentary evidence, I find that the Landlord has not provided sufficient evidence to support the Landlord claim that the Tenant had engaged in illegal activity. I acknowledge the written statement from the Associate Manager submitted into evidence; however, I find that statement to be a second-hand account of what happened during the incident of February 16, 2020, and that it offers no first-hand confirmation that the Tenant, had in fact, done anything illegal on that day.

Overall, I find that there is an absence of evidence to prove that the Tenant had taken part in illegal activity, on the rental property, on February 16, 2020, as claimed by the Landlord. Therefore, I find the Landlord has failed to provide evidence sufficient to show cause to terminate the tenancy for the reasons given on the Notice.

Consequently, I grant the Tenant's application to cancel the Notice dated February 26, 2020, and I find the Notice is of no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Conclusion

The Tenant's application to cancel the Notice is granted, and I find the Notice dated February 26, 2020, to be of no effect under the *Act*. The tenancy will continue until legally 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: May 1, 2020

Residential Tenancy Branch