



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0927000 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was scheduled for 11:00 a.m. on this date, via teleconference call, to deal with a tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* ("1 Month Notice") served on March 7, 2020, and an extension of time to make the application.

The tenant, the tenant's girlfriend, and the tenant's advocate appeared at the hearing; however, there was no appearance on part of the landlord, despite leaving the teleconference call open at least 15 minutes to give the landlord the opportunity to appear.

The tenant's advocate testified that she sent the proceeding package to the landlord via registered mail on April 23, 2020 and the registered mail was successfully delivered on April 28, 2020. The advocate testified that the address used for service was the landlord's service address that appears on the 1 Month Notice. The advocate orally provided the registered mail tracking number as proof of service and I have recorded the tracking number on the cover page of this decision. I was satisfied the landlord was duly served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

With respect to the tenant's request for an extension, the tenant testified that he received the 1 Month Notice on March 7, 2020. The 1 Month Notice has a stated effective date of April 30, 2020. The tenant's Application for Dispute Resolution was filed on April 20, 2020 which is well past the 10 day deadline for filing to dispute a 1 Month Notice.

Section 66 of the Act permits me discretion to grant an extension of time in "exceptional circumstances".

The tenant and his girlfriend testified that after receiving the 1 Month Notice the tenant tried contacting his support worker with the John Howard Society but the support worker was not available. The tenant was undergoing cancer testing and then the COVID-19 pandemic was declared. Since the tenant was at greater risk of illness if he has cancer and contracted COVID-19, the tenant and his girlfriend were not leaving the residential property to find assistance in responding to the 1 Month Notice. The cancer test results took 21 days to come back and the tenant had to speak with his doctor over the telephone since the doctor was not seeing patients in person due to the pandemic.

The tenant's submissions were not supported by any documentation; however, it is undeniable that the COVID-19 pandemic and State of Emergency that was declared as a result of the pandemic has impacted the ordinary course of business in many ways. Further, the landlord did not appear at the hearing to challenge the tenant's request for extension. While not overwhelmingly persuasive, given the unopposed submission, I accept that "exceptional circumstances" that included illness, the pandemic, and the associated restrictions in seeing support workers and doctors, prevented the tenant from filing the Application for Dispute Resolution within time and I grant the tenant's request for an extension.

It should be noted that I informed the tenant of the dispute resolution process and the time limits for filing to dispute a notice to end tenancy, in brief, and that it is vital to initiate a dispute within the time limit for doing so and that only truly exceptional circumstances, along with corroborating evidence in most cases, warrant an extension. The tenant was caused that the reasons for extension provided by the tenant on this date, without corroborating evidence, may not be sufficient for an extension in the future.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause served on March 7, 2020 be upheld or cancelled?

Background and Evidence

The tenant received the subject 1 Month Notice to End Tenancy for Cause on his door on March 7, 2020. The 1 Month Notice has a stated effective date of April 30, 2020.

The 1 Month Notice appears to be in the approved form at the time of issuance; however, the landlord did not spell the tenant's last name correctly.

The landlord indicated the reasons for ending the tenancy on the 1 Month Notice as follows:

- The tenant or a person on the property by the tenant has significantly interfered or unreasonably disturbed another occupant or the landlord; and,
- The tenant or a person on the property by the tenant has engaged in illegal activity that has or likely to jeopardize a lawful right or interest of another occupant or the landlord.

Beside the first reason, the landlord wrote: "loud music and [illegible]". Beside the second reason, the landlord wrote "told manager to shut".

In the details of cause, the landlord indicates that the tenant entered a relationship with another tenant in the building and the two of them are disturbing another tenant with loud music and banging at three in the morning and when the landlord tried to speak to the tenant about the issue the tenant told her to shut up.

During the hearing, the tenant and the tenant's girlfriend acknowledged there was one night of disturbance but explained it as being moving furniture around when they came home to find rodents in their food and they were trying to set traps.

The tenant stated he had not received any warning letters from the landlord prior to receiving the 1 Month Notice.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

In this case, the landlord did not submit evidence prior to the hearing or appear at the hearing to orally present evidence and establish there is sufficient basis to end the tenancy for the reasons indicated on the 1 Month Notice. Further, the 1 Month Notice provides for the incorrect spelling of the tenant's name. These things considered, I find the landlord has not met its burden to demonstrate a valid and meritorious 1 Month Notice was served upon the tenant and I grant the tenant's request to cancel it. Having cancelled the 1 Month Notice, the tenancy continues at this time.

During the hearing, I cautioned the tenant that he must not unreasonably disturb other occupants of the residential property and that doing so is a basis for ending a tenancy under the Act. I also informed the tenant that the 1 Month Notice that has been served upon the tenant may act as a warning notice from the landlord that unreasonable disturbance will not be tolerated. Further disturbances of other occupants may be grounds for the landlord to issue another 1 Month Notice to the tenant. The tenant indicated he understood.

Conclusion

The 1 Month Notice issued on March 7, 2020 is cancelled and the tenancy continues at this time.

The tenant is considered to be put on notice that he must not unreasonably disturb other occupants of the property or significantly interfere with other occupants or the landlord. Future disturbances or interference of other occupants or the landlord may be grounds for the landlord to issue another 1 Month Notice to the tenant.

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: June 04, 2020

Residential Tenancy Branch