



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (application) under the *Residential Tenancy Act* (the Act) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated August 7, 2020 (1 Month Notice).

The tenant and an agent for the landlord BC (agent) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The agent confirmed that the landlord did not submit any evidence in response to the tenant's application. The agent confirmed that they were served with the tenant's application and documentary evidence and had the opportunity to review that evidence prior to the hearing. I find the landlord was sufficiently served under the Act based on the above.

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence by either party. The parties agreed that a fixed-term tenancy began on March 1, 2015 and reverted to a month to month tenancy as of March 1, 2016. Current monthly rent is \$1,100.00 and is due on the first day of each month.

The tenant was served with the 1 Month Notice on August 7, 2020 and filed to dispute the 1 Month Notice the next day on August 8, 2020. The effective vacancy date is listed as September 7, 2020.

In the 1 Month Notice, the landlord has alleged one cause, namely:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The agent confirmed that they did not submit any documentary evidence to support the cause being alleged in the 1 Month Notice. The Details of Dispute portion of the 1 Month Notice alleges the following:

[Name of tenant spelling incorrectly] has been warned on many occasions regarding his excessive noise. This has resulted in the police attending. The last time he was warned in writing that should this happen again he would risk eviction. It happened again on the evening of 5 August, 2020.

The landlord did not submit any of the prior written warning letters for my consideration and did not have any witnesses to provide direct testimony at the hearing. The tenant denied the allegations listed on the 1 Month Notice. The tenant writes in their application that the walls in the building are old and thin and you can hear people talking through walls.

Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of September 7, 2020, which automatically corrects under section 53 of the Act to September 30, 2020 as the rent is due on the first day of each month. The tenant disputed the 1 Month Notice on August 8, 2020, which is within the 10-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice. An allegation without supporting evidence to support that allegation, such as witness testimony or a statement from a witness is not sufficient

evidence to prove a 1 Month Notice, especially when a tenant disputes the reason alleged on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted documentary evidence that supports that the tenant was warned prior, including specific dates and details of what occurred on those specific dates.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find the landlord has provided insufficient evidence to prove that the 1 Month Notice dated August 7, 2020 is valid. Therefore, **I cancel** the 1 Month Notice dated August 7, 2020 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the Act.

Conclusion

The 1 Month Notice issued by the landlord dated August 7, 2020 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The decision will be emailed to both parties as confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 21, 2020

Residential Tenancy Branch