



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC

Introduction

On November 6, 2020 the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking to cancel a One Month Notice to End Tenancy dated October 31, 2020 ("the One Month Notice").

The Tenant, the Tenant Advocate D.D. and the Landlord's Agent L.S. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant stated that he served the Notice of Hearing and documentary evidence package to the Landlord via registered mail. The Landlord's Agent confirmed receipt. I find the above-mentioned documents were sufficiently served pursuant to Section 89 of the Act.

The Landlord's Agent confirmed at the start of the hearing that the Landlord did not submit any documentary evidence in preparation for the hearing. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

Both parties agreed that the tenancy began approximately November 20, 2019. Rent in the amount of \$650.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$325.00. Neither party had a copy of the Tenancy Agreement available.

The Landlord's Agent stated that she served the Tenant with the One Month Notice on October 31, 2020 with an effective vacancy date of December 1, 2020 by posting it on the door of the dispute address. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health and safety or lawful right of another occupant or the Landlord, and put the Landlord's property at significant risk."

"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 or landlord and has jeopardized a lawful right or interest of another occupant or the landlord."

The Landlord's Agent stated that she served the One Month Notice to the Tenant in relation to several recent incidents. The Landlord's Agent stated that the Tenant hit her in the face with a cloth. The Tenant has too many items in his rental unit, the Tenant's guests set off a fire alarm and that the Tenant is suspected of drug dealing.

In response, the Tenant testified that he did not mean to hit the Landlord with the cloth, however, the Landlord was too close to the Tenant while he was washing the cloth. The Tenant stated that the remaining statements made by the Landlord refer to issues that

have taken place in a different rental unit on a different floor. The Tenant stated that he was not present during the fire alarm and that the guests involved were not his.

The Landlord referred to video surveillance evidence, which was not provided as evidence in preparation for the hearing. The Tenant's Advocate stated that the Landlord has not demonstrated that the Tenant or his guests have engaged in any illegal activity, not has the Tenant or his guests have seriously jeopardized the health and safety or lawful right of another occupant or the Landlord, or put the Landlord's property at significant risk.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on October 31, 2020 with an effective vacancy date of December 1, 2020 by posting it on the door of the dispute address. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord's Agent has outlined several concerns relating to being hit with a cloth by Tenant, the Tenant having too many items in his rental unit, the Tenant's guests causing a fire alarm, and suspected drug dealing. The Landlord provided no documentary or digital evidence to support these claims. The Tenant responded by denying the Landlord's claims.

I find that there is insufficient evidence from the Landlord to establish that the Tenant or the Tenant's guests have seriously jeopardized the health and safety or lawful right of another occupant or the Landlord, or put the Landlord's property at significant risk. Nor has the Landlord provided sufficient evidence to demonstrate that 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 or landlord or has jeopardized a lawful right or interest of another occupant or the landlord.

In light of the above, I cancel the One Month Notice, dated October 31, 2020. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated October 31, 2020 is cancelled. The tenancy will continue until 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: January 29, 2021

Residential Tenancy Branch