



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOUBLE D INN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (application) under the *Residential Tenancy Act* (Act) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated November 30, 2020 (1 Month Notice).

The tenant, an advocate for the tenant, MN-S (advocate), an agent for the landlord, SA (agent) and a property manager for the landlord, JR (manager) 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 submitted 3 digital video files in evidence and could not recall the date in which the tenant was served with a USB drive with the video files. The tenant affirmed that the landlord did not serve a USB drive or any video files and have not viewed any video files as a result. The agent confirmed that they did not confirm prior to the hearing if the tenant was able to view any of the video files prior to the hearing. Pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rule) 3.10.5 applies, which states:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

[emphasis added]

Given the above, I have excluded all 3 digital video files as the agent confirmed that they did not confirm prior to the hearing that the tenant viewed any of the 3 digital files.

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

The tenant was served with the 1 Month Notice in person on November 30, 2020, according to their application details, and filed to dispute the 1 Month Notice on December 3, 2020, which is within the 10-day timeline under section 47 of the Act. The effective vacancy date is listed as December 31, 2020. The tenant continues to occupy the rental unit.

In the 1 Month Notice, the landlord has alleged 3 causes, namely:

1. Tenant or a person permitted on the property by the tenant has put the landlord's property a significant risk.
2. 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 the landlord.
3. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The agent confirmed that they did not submit any documentary evidence to support the causes being alleged in the 1 Month Notice, other than the 3 digital video files, all of which were excluded. The agent also confirmed that there was no police officers as a witness for the hearing and only a police file number.

The Details of Dispute portion of the 1 Month Notice alleges the following:

Suspicious activity from tenant's visitor Monday early morning at 4am-9:24am November 23rd 2020. Known vehicle and occupants as drug dealers in Merritt. Been hear (sic) on previous occations (sic) this year to same tenant address [rental unit address] Have documented video of visit and picture of vehicle, plate and face of occupants. This is not tolerable at this building and safety to tenants as we are cleaning up problems and making proper rules for new and excisting (sic) tenants by the motel. RCMP have attended the incident on this day and saw video and talked to [name of tenant] on this matter.

[reproduced as written]

The tenant denied that the details of dispute were accurate and also denied any drug activity as claimed by the landlord.

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 December 31, 2020. The tenant disputed the 1 Month Notice on December 3, 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, such as a witness statement from the police or another 3rd party. 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.

Furthermore, as the video evidence was excluded due to the reason stated above and without a police officer or other 3rd party witness testimony, or witness statements, I find that this matter is a “he said versus he said” matter. In other words, 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 November 30, 2020 is valid. Therefore, **I cancel** the 1 Month Notice dated November 30, 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 tenant’s application is successful.

The 1 Month Notice issued by the landlord dated November 30, 2020 is cancelled and is of no force or effect.

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

As the filing fee was waived, it is not granted.

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: February 26, 2021

Residential Tenancy Branch