



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 the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated January 11, 2020 ("1 Month Notice"), pursuant to section 47.

The landlord, landlord AN ("owner") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 57 minutes.

This hearing began at 1:30 p.m. with the landlord, the owner and I present. The tenant called in late at 1:40 p.m., stating that he had to finish a work call so he could not just hang up on the customer. I informed the tenant about what occurred in his absence. The hearing ended at 2:27 p.m.

The tenant spoke for the majority of the hearing time at approximately 34 minutes, the landlord and owner spoke for approximately 15 minutes, and the remaining 8 minutes was spent discussing basic tenancy details, contact information for both parties, and service of documents.

The owner confirmed that she co-owned the rental unit and that she had permission to represent the other co-owners of the rental unit. The owner confirmed that the landlord, who is the owners' assisting manager, had permission to speak on behalf of all owners.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The tenant confirmed receipt of the landlord's 1 Month Notice on January 11, 2021, by way of posting to his rental unit door. The landlord confirmed that the notice was served on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on January 11, 2021.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 13, 2018. Monthly rent in the amount of \$932.00 is payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The tenant seeks to cancel the 1 Month Notice. The landlord seeks an order of possession based on the 1 Month Notice. The tenant provided a copy of the 1 Month Notice for this hearing. Both parties agreed that the notice indicates an effective move-out date of February 28, 2020, and the reason indicated is:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

The landlord stated the following facts. There were noise complaints made on different days and warnings were given. The landlord received verbal and written complaints from other occupants threatening to move out. The landlord submitted a video of the noise made in the middle of the night on January 1. Section 16 of the parties' tenancy agreement states that no loud noise is allowed between 11:00 p.m. and 9:00 a.m. and only conservative noise is allowed at any time.

During the hearing, the tenant read out a lengthy written statement, which he said was 10 pages long, for approximately 34 minutes without interruption. In that statement, the tenant stated the following information, in part. The tenant disputes the landlord's allegations made in the 1 Month Notice. There were five noise complaints made against the tenant, which are untrue, except on one occasion on January 1. The landlord could have manipulated the audio recording that the landlord submitted, so it was not trustworthy. There was noise coming from somewhere, but not the tenant's rental unit. The tenant has not been told by his friends that he is noisy. The tenant has exchanged Christmas gifts with friends at the rental property. The tenant plays guitar, and no one has complained about it. The tenant has taken out garbage at the rental property, but he is not noisy or disturbing anyone. The tenant was at work and works long hours, during times when the landlord complained about noise against him. No police or bylaw officers have been to the tenant's rental unit. The tenant played music on January 1, but it was not past 2:00 a.m. and other people at the rental building were being loud and playing music because it was New Year's Eve. The tenant has complaints about the hot water and maintenance at the rental property. The tenant wants a rent reduction, for which he will apply for against the landlord in the future. The landlord named in this application is not a landlord, she lives at the rental property, and helps with job duties. The owner has changed repeatedly during this tenancy.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on January 11, 2021 and filed his application to dispute it on January 21, 2021. Therefore, he was within the ten-day time limit to dispute the 1 Month Notice. Accordingly, it is the landlord's burden of proof, on a balance of probabilities, to prove the reason on the 1 Month Notice.

Section 47(1) of the *Act* states that landlord may only end a tenancy if at least one reason indicated on the 1 Month Notice applies. The landlord did not go through any of their documents during the hearing or indicate why they were submitted for this hearing.

I find that the landlord failed to show that the tenant *significantly* interfered with or *unreasonably* disturbed another occupant or the landlord. I find that the landlord failed to provide specific details or information regarding the noise complaints against the tenant. The landlord only provided brief information, as noted above, for approximately 5 minutes during this hearing. The tenant spent 34 minutes during this hearing, providing details and disputing the landlord's claims of five noise complaints, as indicated on the 1 Month Notice details section of the form.

For the above reasons and on a balance of probabilities, I find that the landlord provided insufficient evidence that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. Therefore, I find that the landlord did not issue the 1 Month Notice for a valid reason.

The tenant's application is allowed. The landlord's 1 Month Notice, dated January 11, 2020, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application is allowed.

The landlord's 1 Month Notice, dated January 11, 2020, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession.

This tenancy continues until it is 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: April 16, 2021

Residential Tenancy Branch