



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 by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 29, 2021.

The tenant and the tenant’s advocate attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on February 11, 2021. The tenant stated that the package was received by the landlord and they also spoke to the landlord to confirm this.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

The tenant and tenant’s advocate appeared gave testimony and were provided the opportunity to present their evidence orally and in written, documentary form, and make submissions at the hearing.

Issue to be Decided

Should the Notice issued be cancelled?

Background and Evidence

The Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on March 1, 2021.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk; and
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or likely to, damage landlord's property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The Notice does not provide any description of what, where and who caused the issue or any dates or times.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

This matter was set for hearing by telephone conference call at 9:30 A.M. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the tenant and the tenant's advocate..

Since the landlord did not attend the hearing by 9:40 A.M to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reasons stated. I find that the landlord has failed to show cause to end the tenancy.

Further, I find it would be unfair to the tenant to defend the Notice, as the landlord did not provide any detail of the events in the Notice.

Therefore, I grant the tenant's application to cancel the Notice issued on January 29, 2021, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Conclusion

The tenant's application to cancel the Notice is granted. The tenancy will continue until legally 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: May 07, 2021

Residential Tenancy Branch