



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was scheduled to convene at 11:00 a.m. on June 25, 2021 concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant attended the hearing with a family worker to assist, and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call. The tenant testified that the landlord was served with the Application and notice of this hearing by email on June 2, 2021 and was permitted to provide proof of such service after the hearing had concluded. I now have a screen shot of the email along with copies of the respondent documents served with it.

The *Residential Tenancy Act* specifies that an applicant must serve the respondent within 3 days of receiving the documents from the Residential Tenancy Branch for service. In this case, the tenant testified that she was not able to use the computer at the library, which is how the tenant usually accesses the internet, because of COVID-19. In the circumstances, I am satisfied that the landlord has been served, and all evidence and the testimony provided by the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that the One Month Notice to End Tenancy for Cause should be cancelled?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 6, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 is payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 4 floors of apartment units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the landlord served the tenant with a One Month Notice to End Tenancy for Cause personally on May 6, 2021. A copy of the first page of the Notice has been provided for this hearing and it is dated May 6, 2021 and contains an effective date of vacancy of June 6, 2021. The tenant testified that the reasons for issuing it state:

- tenant is repeatedly late paying rent;
- tenant or a person permitted on the property by 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;
- tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
- 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.

The tenant also testified that rent is paid to the landlord directly from a government ministry and has not been late.

The day after the landlord served the Notice, the landlord attended at the rental unit with a maintenance person and told the tenant to dispute the Notice. The tenant believes the Notice was given because of a comment made on social media.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Since the landlord has not joined the hearing, and has not provided any evidentiary material, I am not satisfied that the landlord has complied with the law.

In the circumstances, I find it necessary to cancel the Notice and order the landlord to comply with the *Residential Tenancy Act* by acting only in accordance with the law with respect to ending the tenancy, and I so order.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 6, 2021 is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with the *Residential Tenancy Act* by acting only in accordance with the law with respect to ending the tenancy.

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: June 28, 2021

Residential Tenancy Branch