



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 7, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

The Tenant and the Landlord both attended the hearing and provided affirmed testimony. Both parties confirmed that they understood Rule 6.11. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's Notice of Hearing and attached letter dated September 1, 2021. The Tenant stated he sent the Landlord more evidence, by email, on the day of the hearing. The Landlord did not acknowledge receiving these letters. The Tenant did not explain why his evidence was late. Further, he didn't provide any of this second evidence package to the RTB.

As stated in the hearing, Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the applicant's evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent's not less than 14 days before the hearing. Further, according to Rule 3.15, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The Tenant failed to explain why this evidence was late, or if it is new and relevant evidence. As such, I find it is not admissible.

The Tenant acknowledged receiving the Landlord's evidence without issue.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for his application?

Background and Evidence

The Tenant stated that he received the Notice on August 17, 2021. A copy of the Notice was provided into evidence. The Landlord selected the following ground as a basis to end the tenancy:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord explained that they already had a hearing on July 6, 2021, and as part of that proceeding, the Arbitrator amended the tenancy agreement pursuant to section 14(3)(c) of the Act to include the following term:

"The rental unit is for a single occupant only. The Tenant is the only person authorized to occupy the rental unit. If one or more persons is found to be living in the rental unit with the Tenant, this would be a material breach of the Tenancy Agreement and the Landlord may issue a One Month Notice to End Tenancy for Cause."

The Decision from the July 6, 2021, hearing also gave the Tenant 14 days to move his guest/roommate out of the rental unit.

The Landlord explained that following that hearing, she did an inspection of the Tenant's rental unit on July 29, 2021, and the Tenant's roommate was not there. The Landlord stated she did not see evidence of the Tenant's roommate living there at that time, but she suspects they only moved belongings out temporarily for the inspection. The Landlord stated that since the time of the inspection, she has seen the Tenant's roommate at the building almost every day (the Landlord works across the street). The

Landlord further explained that her handyman at the building has also seen the Tenant's roommate there multiple times per week, and she appears to be engaged in day to day living at the building. The Landlord pointed to an email from the Tenant's roommate, which she wrote at 12:30 am in order to complain that her and the Tenant's Christmas decorations were vandalized.

The Tenant acknowledged that he had a roommate but after the last hearing, he asked her to move out. The Tenant stated that, since that time, his roommate has resided at a friend's house, and only comes to visit the Tenant. The Tenant explained that his roommate does not live with him in the room any longer, although she spends significant time there because she has other friends in the building, and she has a small garden to tend to. The Tenant estimates that she sleeps over a couple times a week.

The Tenant also stated he has a couple of letters to support that his roommate no longer lives with him. He stated he has a letter from his roommate's current Landlord, stating she lives there most of the time, as well as another letter from a friend in the building who knows her and asserts she doesn't live in the rental unit anymore. The Tenant did not provide any of these letters into evidence.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord entered into written evidence a copy of the August 17, 2021, Notice. In that Notice, the Landlord cited the following grounds to end the tenancy:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

After reviewing the totality of evidence and testimony on this matter, I note the Landlord asserts that the Tenant's roommate failed to move out in accordance with the new term of the tenancy agreement which was added at the last arbitration hearing in July 2021. The Tenant does not agree with the Landlord's assertions and states he complied with the new term of the tenancy agreement and moved his roommate out of the rental unit sometime in mid-July 2021.

I note the Landlord stated she has seen the Tenant's roommate around the property, almost daily. I also note the Landlord's maintenance staff have seen the Tenant's roommate around the property a couple times a week. The Tenant acknowledged that

his old roommate still comes over frequently, and will stay over the occasional night, but that she has a place of her own.

The Landlord appears to have done an inspection of the rental unit around July 29, 2021. However, I note there was no evidence, at that time, that the Tenant's roommate was still living there. From that point on, there have only been frequent sightings of her in and around the building, but little evidence that she actually resides there. I note the Tenant's roommate also comes frequently because she has other friends in the building.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the burden of proof rests with the Landlord. Without further proof the Tenant's roommate still lives or resides in the rental unit or has failed to move out, I find the Landlord has not provided sufficient evidence the Tenant has breached a material term of the tenancy agreement. As a result, I find there is insufficient cause to end the tenancy under this Notice. The Notice issued August 17, 2021, is cancelled.

The Tenant's application is successful. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The April and May Notices are 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 07, 2022