



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be permitted more time than prescribed to dispute a notice to end the tenancy given by the landlord?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 1, 2018, although the tenant was permitted to move in a few days earlier. Rent in the amount of \$650.00 in addition to hydro of \$8.00 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 \$325.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a studio suite in a complex containing 32 units in each of 2 buildings. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on February 25, 2022 the landlord's agent served the tenant with a One Month Notice to End Tenancy for Cause (the Notice) by either posting it to the door or placing it in the tenant's mailbox outside the tenant's rental unit. A copy of the Notice has been provided for this hearing and it is dated February 25, 2022 and contains an effective date of vacancy of March 31, 2022. The reason for issuing it states: Breach of a material term of the tenancy agreement that has not been corrected within a reasonable time after written notice to do so.

The tenancy agreement specifies that smoking is permitted in designated smoking areas only, and the tenant has been smoking inside the rental unit.

The landlord has provided 2 photographs of 2 outside vents to show yellowing on only 1 of the vents and believed that the written warnings were attached, but are not in the evidence uploaded to the Residential Tenancy Branch system. However, the landlord's agent testified that a warning for smoking inside was given on September 12, 2020 and the landlord's agent was made aware that the tenant continued to smoke. The landlord's agent served the tenant with a notice to end the tenancy in February, 2021. The tenant spoke to the landlord, plead his case that he had quit smoking, and given that the tenant is a good tenant, the landlord's agent agreed to cancel the Notice. Subsequently, the landlord received repeated complaints from neighbours that the halls had a smoke smell as well as the bathroom in the rental unit above. Also, a board member gave the tenant a new couch and took the old one away which smelled of smoke.

The rental complex has a number of seniors, and smoking is a health hazard for some. In September, 2021 the landlord's agent gave all smokers a warning that smoking is not permitted inside the building, and that paragraph 13 of the tenancy agreement states that the landlord has the right to terminate tenancies if tenants breach the terms, and that rental units can be inspected.

The tenant testified that he has been wrongly accused and a board member has been inside the rental unit. Four or five people smoke in the smoking area, and the tenant believes the smoke smell is coming from his suite, but it's not; the smoking area is at the front entrance door. The landlord put up a notice about where the smoking area is, which is at the front entrance door.

There is no damage to the tenant's rental unit; it is clean. The tenant is respectful and doesn't bother anyone. The tenant no longer smokes and doesn't go to the smoking area anymore.

Analysis

Firstly, the landlord's agent testified that the One Month Notice to End Tenancy for Cause was served to the tenant on February 25, 2022 by either placing it in the tenant's mailbox or posting it to the door. Either way, the *Residential Tenancy Act* specifies that documents served in that manner are deemed to have been served 3 days later, which would be February 28, 2022. The tenant had 10 days to dispute it, and disputed it on March 10, 2022, which is the 10th day. Therefore, I find that the tenant has filed the dispute on time.

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 *Act*. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*.

The tenant disputes the reason for issuing the Notice, and the landlord has not provided any evidence of a written warning with reasonable time to correct the breach.

Therefore, I am not satisfied that the landlord has established that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, and I cancel the Notice.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated February 25, 2022 is hereby cancelled and the tenancy continues.

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 31, 2022

Residential Tenancy Branch