



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of a 1 Month Notice to End Tenancy for Cause.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and had not served any evidence of their own. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 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 all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree that the landlord issued a 1 Month Notice to End Tenancy dated March 11, 2022. The tenant was served the 1 Month Notice and filed their application to dispute the notice on March 21, 2022. The reasons provided on the notice for the tenancy to end are:

Tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

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

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord provided some details of the alleged breaches on the notice.

The landlord gave lengthy testimony about the condition of the rental property, numerous violation tickets issued by the municipality for the condition of the property, and ongoing attempts to have the tenant clean the property.

The tenant disputes the landlord's submissions and details of cause in their entirety and disputes that there is any basis for this tenancy to end.

Analysis

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In the present case the tenant confirms receipt of the 1 Month Notice on March 11, 2022 and filed their application to dispute the notice on March 21, 2022, within the statutory timeline.

The standard and onus of proof is delineated in Residential Tenancy Rule of Procedure 6.6 which provides that:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate any of the following:

Tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

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

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord gave some testimony about the condition of the rental property and multiple bylaw infractions from the municipality about the condition of the property. The landlord referenced documentary evidence including tickets and reports from the municipality but failed to submit any of these materials. I further note that despite claiming a breach of a material term of the agreement the landlord failed to submit a copy of the tenancy agreement or state what specific portion of the agreement has been breached.

The landlord's evidence consists solely of their rambling testimony which is not supported in documentary materials and appear to be more in the nature of general grievances and complaints rather than actual evidence of breaches or illegal activity.

Given the paucity of evidence, I find that the landlord has not met their evidentiary burden. Accordingly, I allow the tenant's application and cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The 1 Month Notice dated March 11, 2022 is cancelled and of no further force or effect. This tenancy continues 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: June 3, 2022

Residential Tenancy Branch