



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

The tenant's application was filed within the time period required under the Act.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy for this single room occupancy unit began in December 2021. There is no written tenancy agreement in place.

The landlord served the tenant with a One Month Notice on June 3, 2022, which was issued on the following grounds:

- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property,
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord

The landlord testified the tenant is dealing opioids to other tenants in the building. The landlord testified that many tenants in the building are recovering addicts and on replacement therapy. The landlord testified that the tenant is also smoking in the building even though he knew from day one that it was not allowed. The only evidence submitted by the landlord in support of the above is a statement letter from another tenant D.K.. In this undated statement, D.K. writes that the tenant paid him \$20.00 to write a previous letter of support for the tenant. The statement also states that the tenant told him (D.K.) that he buys opioids and sells them in Saskatchewan for profit.

The tenant testified that he has not smoked in the unit since the beginning of January 2022 when he was first advised by landlord that it was not permitted. The tenant denied selling any drugs in the building or anywhere else. The tenant testified that he is on replacement therapy for opioids himself. The tenant testified that he has not had any visitors to his room. The tenant submitted letters of support from various tenants and the manager of the building.

The tenant's advocate submits that the landlord has failed to meet its burden to prove notice should be upheld. The tenant's advocate submits that the landlord has not provided any evidence of illegal activity such as police involvement or video evidence from cameras in the building.

In reply, the landlord submits that the tenant paid D.K. to write a letter of support; therefore, the other letters of support should be questioned as well.

The tenant denied paying D.K. to write the letter. The tenant alleges the landlord threatened D.K. to change his statement.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

The landlord issued the One Month Notice on the grounds of illegal activity. Considering the seriousness of these allegations, it is puzzling why the landlord would not submit more evidence to support these allegations. I give no weight to the statements from D.K. as he gave conflicting statements, and he was not called to testify in the hearing by either party. The landlord provided no other evidence to support that the tenant was carrying on the alleged illegal activity. I also note that although smoking may be a breach of a material term of a tenancy agreement, it is not an illegal activity.

Accordingly, I find the landlord presented insufficient evidence to justify cause to issue the One Month Notice. The landlord's One Month Notice, dated June 2, 2022, is hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's One Month Notice, dated June 2, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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: July 22, 2022

Residential Tenancy Branch