



Dispute Resolution Services

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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 the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the Act, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

Pursuant to my authority under Rule 6.10 the parties were cautioned against disruptions and inappropriate behaviour several times during the hearing. Despite the warnings the tenant continued to interrupt the proceedings and make irrelevant submissions. Due to the continued inappropriate behaviour of the tenant the mute function on the teleconference call was used to prevent them from disrupting proceedings during the submissions of the other party.

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 parties each testified that they received the respective materials and based on their testimonies I find each party 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.

This periodic tenancy began about 3-4 years ago. The monthly rent is approximately \$1,900.00. The rental unit is a suite in a detached house with the landlord residing in the other portion of the property.

Despite having named the respondent in their application for dispute resolution, the tenant submits that the named respondent is not the landlord and a family member of the property owner.

While the parties agree that a 1 Month Notice was issued on or about March 23, 2022, neither party provided a copy of any notice into documentary evidence. The full contents of the materials submitted by the parties include:

By the Tenant:

- A 6-page document consisting of a statement from a witness, correspondence from the tenant dated June 3, 2019, 3 photographs and a typewritten document signed by the tenant and owner of the property dated December 31, 2019

By the Landlord:

- 5 video recordings taken by the landlord of interactions with the tenant;
- A photograph of a handwritten note dated February 27, 2022 stating the landlord will do a “check-up of home” on March 1, 2022;
- A 3-page typewritten document of various interactions between the landlord and the tenant.

The landlord provided lengthy testimony talking about their discomfort with the presence and behaviour of the tenant describing it as “creepy and stalkery”. They repeatedly mentioned incidents where the tenant was standing on the common area patio and that the landlord believed the tenant was watching them. The landlord testified about the tenant’s guests allowed on the property who they say are similarly disturbing due to their making eye contact with the security camera or general demeanor.

The landlord describes the tenant in the following way in their written submissions:

Tenant is erratic, has no social awareness, does not respond well to boundaries and retaliates. He is obsessed with bullying me and making me feel uncomfortable which is one of the reasons why security cameras had to be set up. He intimidates me and shows stalking tendencies. I am in constant fear and really uncomfortable with. He has caused me significant stress

The landlord mentioned an incident occurring on March 2, 2022 where they say the tenant shoved them and police were called. The landlord says that the incident gave rise to the issuance of the 1 Month Notice.

The tenant disputes the landlord’s submissions in their entirety and states there is no basis for this tenancy to end. The tenant attempted to give testimony on matters irrelevant to the matter at hand such as their belief that the landlord has entered the rental unit without their knowledge or permission to damage personal property and complaints from others they have allowed to reside in the rental property.

Analysis

Section 47 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. 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.

In the present case neither party has provided a copy of a valid Notice to End Tenancy. In the absence of documentary evidence, I am unable to make finding that an effective notice, conforming to the form and content requirements of section 52 of the *Act* was issued. I find, based on the lack of evidence that the landlord has not provided

sufficient evidence to demonstrate, on a balance of probabilities, that there is cause to end this tenancy.

I note parenthetically, that much of the evidence provided by the landlord including their testimony and video evidence may not have been sufficient to establish a basis to end the tenancy in any event. I find that the description of the behaviour by the tenant including standing, staring and failing to respond to questions may not be individually or cumulatively sufficient to be reasonably considered an unreasonable disturbance or significant interference. I find that the video footage submitted does not show conduct that would reasonably be characterized as a disturbance or interference and it appears that the landlord is themselves engaging in verbal attacks and swearing with the tenant. In any event, in the absence of a proper 1 Month Notice in documentary evidence I find no need to make a determination on whether the behaviour constitutes a basis for the tenancy to end.

I further note that the tenant's various complaints about the landlord are not before me as the application is limited to what is claimed on the application pursuant to Rule 6.2. The parties remain at liberty to file separate applications for claims that have not been conclusively dealt with in this hearing.

Based on the foregoing, I allow the application to cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The 1 Month Notice is cancelled. 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: July 15, 2022

Residential Tenancy Branch