



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes TT: CNC
 LL: OPC

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord sought an Order of Possession pursuant to section 55.

The tenant sought cancellation of a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents with agent DM (the “landlord”) primarily speaking. The tenant was assisted by their workers who were physically present with them and their advocate who called in from a separate location.

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.

The landlord testified that they received the tenant’s application and materials and based on the undisputed testimony I find they were duly served in accordance with sections 88 and 89 of the Act.

The tenant disputed receiving the landlord’s application. The landlord testified that a previous agent of the landlord posted the materials on the tenant’s rental unit door on or about July 29, 2022. Under the circumstances, I am satisfied with the landlord’s

testimony and find that the tenant is deemed served with the landlord's materials in accordance with sections 88, 89 and 90 of the *Act* on August 1, 2022, three days after posting and in any event have been sufficiently served pursuant to section 71(2)(b) of the *Act* on that date.

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 on the following facts. This tenancy began on April 1, 2022. The current monthly rent is \$375.00 payable on the first of each month. The rental unit is a suite in a multi-unit building with 83 other units.

The landlord submits that guests of the tenant have been involved in several incidents that have caused serious injuries to other occupants, unreasonable disturbance of occupants and staff and has caused significant damage to the property. The landlord cited an incident on April 5, 2022 when a guest assaulted an occupant of the property breaking their jaw and requiring police intervention. The landlord says another guest of the tenant has caused damage to the rental property by breaking locks and doors and stalking another occupant of the building. Both of the agents gave testimony about the conduct of these guests of the tenant whom they say have subsequently been barred from all buildings managed by the landlord. The landlord submits that the guests attending on the property is an ongoing issue with multiple disruptions caused by them.

The landlord made reference to security footage showing the tenant allowing these guests entry to the rental property, log books and incident reports but submitted none of these into documentary evidence. The landlord referenced an addendum to the tenancy agreement that provides that a tenant is responsible for the conduct of their guests but only provided the standard form tenancy agreement into evidence.

The tenant disputes that they were the ones who allowed the individual who was involved in the April 5, 2022 incident. The tenant disputes that they have allowed

banned individuals onto the property and both they and their support workers testified that since the ban has been placed by the landlord on specific individuals, they have made other arrangements to see them off of the rental property.

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 confirmed receipt of the 1 Month Notice on April 26, 2022 and filed their application to dispute the notice on May 5, 2022. Therefore, I find the tenant was within the statutory timeline to file their application.

When a tenant files an application to dispute a notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord provided testimony about the conduct of the tenant's guests which they characterize as a significant interference and unreasonable disturbance of others which has caused serious jeopardy to the health, safety and lawful rights of the landlord's staff and other occupants. While the landlord gave cogent, consistent testimony they failed to submit documentary materials to support their position.

While I appreciate the position of the landlord's agent who said they have only recently assumed their position and were not involved in the process of gathering or submitting evidence for the dispute resolution hearing, I find the dearth of documentary evidence negatively affects the landlord's position. It would be reasonable to expect that a landlord who is in the business of providing and managing housing, especially for tenants from marginalized backgrounds and face multiple challenges, would maintain comprehensive, accurate records. I find this expectation would be further increased given the serious nature of the disruptions from the tenant's guests described by the landlord.

I find that the testimony of the landlord's agents, much of which consists of hearsay materials from previous employees or pertain to issues irrelevant to the matter at hand such as the conduct of the tenant's guests at previous residences, is insufficient to meet their evidentiary burden on a balance of probabilities.

Given the paucity of the landlord's evidence I am not satisfied that the landlord has met their evidentiary burden and consequently dismiss the landlord's application. The tenant's application to cancel the 1 Month Notice is granted. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is granted. This 1 Month Notice of April 26, 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: September 1, 2022

Residential Tenancy Branch