



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNC**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s 10 Day Notice to End Tenancy (“10 Day Notice”) pursuant to section 46
- cancellation of the landlord’s One Month Notice to End Tenancy (“One Month Notice”) pursuant to section 47

Both parties attended the hearing with the landlords being represented by agent JR, while the tenant MC appeared along with advocate MNS. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the 10 Day Notice dated July 3, 2022, with an effective date of March 13, 2022, and the One Month Notice dated October 31, 2022, with an effective date of November 30, 2022. Pursuant to section 89 of the Act the tenants are found to have been served with these notices in accordance with the Act.

The landlord was unable as agent to acknowledge service of the tenant’s dispute notice and materials. I find based on the evidence provided by the tenant that they sent a dispute notice and supporting materials to the landlord by registered mail on October 24, 2022, and further materials with respect to the amendment of the notice on November 4, 2022, by registered mail.

Preliminary Issue

The landlord advised at the hearing that they were not relying on the 10 Day Notice, which I find does not comply with section 52 of the Act as both the service dates and effective dates are incorrect. The hearing is proceeding on the dispute of the One Month Notice alone.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy commenced August 1, 2021, on a month-to-month basis. Rent is \$1,250.00 per month due on the first of the month and a security deposit of \$525.00 is held in trust for the tenant. The tenant still occupies the rental unit.

The landlord stated that there was a noise complaint about the tenant partying with friends. The agent for the landlord was not specific about the date of the complaint but stated it occurred 1-2 weeks prior to issuing the 10 Day Notice. There was a further complaint about noise and glass and garbage in the parking lot of the residence. The agent for the landlord stated that there were ongoing complaints from August to October 2022, and that was the reason for issuing the One Month Notice. No written documentation of the complaints or evidence documenting the issues with the tenant were provided in evidence. Another complaint involved the tenant and other occupants, and charges were laid. The landlord did not produce any documentary or photographic evidence in support of the complaints.

The tenant stated that at least one complaint was regarding noise that was occurring at 6:00pm. The landlord agrees that the noise complaint was at this time. She stated that she was outside of the rental unit with friends having a cigarette. She agreed that there was an incident involving other tenants and charges were laid, however the other occupants were also charged, and all the charges were eventually dismissed. She denied being responsible for the glass and debris in the parking lot.

Analysis

RTB Rules of Procedure 6.6 states, "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." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

I find that the landlord has not established the reasons for ending the tenancy. The One Month Notice lists the following:

<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/>	put the landlord's property at significant risk.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
<input checked="" type="checkbox"/>	damage the landlord's property.
<input checked="" type="checkbox"/>	adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
<input type="checkbox"/>	jeopardize a lawful right or interest of another occupant or the landlord.
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input type="checkbox"/>	Tenant has not done required repairs of damage to the unit/site.
<input checked="" type="checkbox"/>	Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord alleges that the tenant was noisy at 6 pm. While the noise created by the tenant may have disturbed another occupant, I find that noise at 6 pm is not an unreasonable disturbance. The landlord has not provided evidence showing that the noise was unreasonable given the time of day it occurred.

The landlord has provided no evidence to show that the tenant is responsible for the glass and debris in the parking lot and the tenant denies responsibility. The landlord has not established on the evidence that the debris and glass in the parking lot were the tenant's responsibility.

The landlord has not established that any extraordinary damage to the property was caused by the tenant by way of photos or other documentary evidence.

The landlord has provided no evidence regarding the tenant breaching a material term of the tenancy agreement, or evidence of a written notice to the tenant requiring the tenant to correct the issue.

The landlord has not established that the tenant engaged in an illegal act that has either damaged the landlord's property or adversely affected the quiet enjoyment, safety,

security or physical well being of another occupant. The evidence of the tenant is that any charges were dropped.

I find that the landlord has not established any of the reasons for ending the tenancy listed in the One Month Notice. The tenant's application for dispute resolution is therefore granted.

Conclusion

The tenant's application to cancel the One Month Notice is granted. The tenancy shall continue 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: November 23, 2022

Residential Tenancy Branch