



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC**

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act

The landlord AK, witness IM and tenant GC attended the hearing. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 13, 2022. With an effective date of December 31, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act.

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

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation and/or the tenancy agreement?

Background and Evidence

The tenancy commenced on September 1, 2006 and is currently month to month. The current rent is \$1,930.00 due on the first day of the month. The landlord holds a security deposit of \$360.00 in trust for the tenants. The tenants still occupy the rental unit.

The landlord produced the One Month Notice in evidence and testified that it was issued for the following reasons:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☒ put the landlord's property at significant risk
- ☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
- ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.
- ☒ Tenant or a person permitted on the property by the 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.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.

The landlord alleged that the tenants permitted access to the rental property for homeless individuals who were then living in various common areas of the rental property. The landlord contacted the police when it was discovered by checking camera footage that on October 26, 2022 they were able to observe a person who the landlord believes is a homeless person access the building using a key. Police removed the homeless person and advised the building manager that someone named "Brock" provided the homeless person with keys to the property. The police removed that individual from the rental property. The landlord uploaded a video in evidence depicting police speaking with someone off screen, and the landlord alleges this is the conversation with the building manager regarding the homeless people.

The tenants denied providing homeless people with keys to the building or otherwise allowing them access. The tenants did state on one occasion they asked a homeless person to assist the with removing some unwanted items out to the street.

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 tenants apply 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 tenants.

I find that the landlord has not established on the evidence that the tenants provided a key to a person not living in the rental property. The camera evidence that was referred to by the landlord of the homeless person accessing the rental property with a key was not provided in evidence. It is unclear based on the evidence whether the person entering the rental property on October 26, 2022 is the individual who the police located and removed from the building. Further, in the video depicting the conversation between the police and the building manager, the police use a name similar to but not the same as the name of one of the tenants, and no last name was provided. There is no direct or compelling evidence provided by the landlord to establish the tenants are responsible for allowing homeless people to access, and sleep in the storage area.

Based on all of the evidence I am not satisfied that the landlord has not complied with the Act, regulations or tenancy, agreement, and therefore no order is required. I therefore I dismiss this ground of the tenants’ application.

The One Month Notice complies with the form and content requirements of section 52 of the Act; however I find that the landlord has not established the reason for issuing the One Month Notice. Therefore, the tenants’ application is granted and the One Month Notice is cancelled.

Conclusion

The tenants’ application is granted. The One Month Notice is cancelled. 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: February 22, 2023

Residential Tenancy Branch