



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HORIZON TOWERS REALSTAR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On September 23, 2022, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking to cancel a One Month Notice to End Tenancy for Cause dated September 9, 2022, ("the One Month Notice"). The Tenants also applied to recover the filing fee for the Application.

The Landlord's agent ("the Landlord") and the Tenants appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy began in July 2003 as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. Rent in the amount of \$1,262.30 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$400.00. The rental unit is in a multi unit residential building.

On September 9, 2022, the Landlord served the One Month Notice to the Tenants by attaching it to the Tenants door. The One Month Notice has an effective date (the date the Tenant must move out) of October 31, 2022.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

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 or the Landlord.

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice.

The Tenant testified that they received the One Month Notice on September 9, 2022, and disputed the One Month Notice on September 14, 2022 within the required time period. The Tenants provided a receipt showing that the One Month Notice was disputed on September 14, 2022. The hearing proceeded.

The Landlord testified that a resident of the property sent her an email stating she had received a message that a courier package had been delivered to her on August 19, 2022 @1:21 pm; however, it was missing. The resident asked the Landlord to check the video camera footage of the mailboxes.

The Landlord provided photographs of a courier dropping mail / packages off at the property.

The Landlord provided of a 31 second video recording showing the Tenant standing at the mailboxes taking two packages. One package was taken from the top of the mailbox area. The Landlord stated that she believes that one of the packages taken belongs to the resident/ victim.

In response to the Landlord's testimony, the Tenants acknowledged taking two packages and they stated that the two packages belonged to them. The Tenants made lengthy submissions on the reliability of the Landlord's video evidence including that it does not show the person delivering packages or where the packages were placed.

The Tenants stated that couriers often do not have access to mailboxes and will put packages on the top of the mailboxes. The Tenants questioned the Landlord asking which of the two packages in the video belongs to the victim?

The Landlord responded that the only evidence she has is from the victim that a package is missing and video footage of the Tenant taking two packages.

Analysis

In the matter before me, the Landlord has the burden to prove that the reason for ending the tenancy in the Notice is valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

While I find the Landlord's evidence to be suggestive that the Tenants took a package that does not belong to them, I find it is insufficient to prove the Tenants have engaged in illegal activity. The Landlord's photo evidence shows a courier delivering multiple packages, with at least four packages placed on top of the mailboxes. The Landlord's video file only shows two packages on the top of the mailbox area.

It appears that other residents removed packages from the mailbox area prior to when the video recording was taken. The Landlord could not identify which package belonged to the victim and the Tenants testified that both packages they took belonged to them.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated September 9, 2022.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold the amount of \$100.00 from one future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated September 9, 2022, is cancelled.

The tenancy will continue 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: February 02, 2023

Residential Tenancy Branch