



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

On August 15, 2016, the Tenant submitted an Application for Dispute Resolution asking for more time to make an application to cancel a Notice to end tenancy, and requesting to cancel a 1 Month Notice to End Tenancy for Cause dated July 27, 2016 (the 1 Month Notice).

The matter was set for a conference call hearing. Both parties 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.

Preliminary and Procedural Matters

The Tenant testified that she was out of town for two weeks and did not receive the 1 Month Notice until August 13, 2016. She testified that the rental unit was empty during her absence.

The Landlord testified that she was unable to contact the Tenant between July 21, 2016, and August 8, 2016, so she contacted the R.C.M.P. to check on her. The Landlord stated that the Tenant was not at the rental unit to receive the 1 Month Notice.

I find that the Tenant did not return home until August 13, 2016. I find that the Tenant received the 1 Month Notice on August 13, 2016, and disputed the 1 Month Notice on August 15, 2016. In the circumstances, I find that the Tenant disputed the Notice within

10 days of receiving the 1 Month Notice, and the request for more time to make an application is not needed.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?
- Should the 1 Month Notice be cancelled?

Background and Evidence

Both parties testified that the tenancy commenced on May 1, 2016, for a 3 month fixed term tenancy. Rent in the amount of \$950.00 is due on the first day of each month. The Tenant paid the Landlord a security deposit of \$475.00. Neither party provided a copy of the tenancy agreement.

The Landlord testified that she posted a 1 Month Notice To End Tenancy For Cause dated July 27, 2016, (the 1 Month Notice) on the Tenant's door in hopes to prompt a response from the Tenant regarding an extension to the fixed term tenancy.

The Landlord testified that she posted the 1 Month Notice on the Tenant's door on July 27, 2016. The reason for ending the tenancy within the 1 Month Notice is:

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 submitted that on August 23, 2016, she received the signed lease extending the tenancy to October 31, 2016, and she also received Notice of this hearing.

The Landlord submitted that on August 23, 2016, she issued warning letters to the Tenant regarding smoking in the unit and for having pets in the rental unit.

The Tenant testified that the cats were left in her rental unit by her ex-partner without her knowledge. She testified that the cats are not hers and that the cats are now gone. The Tenant testified that she has also cleaned the carpet.

The Tenant testified that she did not receive any first Notice from the Landlord prior to receiving the 1 Month Notice.

In response, the Landlord testified that she did not issue a warning letter or breach letter to the Tenant prior to issuing the 1 Month Notice.

Analysis

The Landlord's Notice states that there was a Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I find that the Landlord did not provide the Tenant with written Notice that there was a breach of a material term of the tenancy prior to issuing the 1 Month Notice.

The 1 Month Notice To End Tenancy was issued prior to the end of the fixed term tenancy, and therefore I find that the Tenant was not in breach of any term of the tenancy agreement. The 1 Month Notice was also issued prior to the Landlord issuing any written warnings to the Tenant regarding smoking and pets.

I find that the Landlord has not provided sufficient evidence to support that there was a breach of a material term of the tenancy that was not corrected within a reasonable time after written Notice to do so; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated July 27, 2016.

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

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated July 27, 2016, 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: October 12, 2016

Residential Tenancy Branch

