



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHARTWELL CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, MNDC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package, the amendment to the Application for Dispute dated July 27, 2017 and again for a second Application dated July 31, 2017 and the 6 documentary evidence packages via Canada Post Registered Mail from June 19, 2017 to July 29, 2017. The landlord's agent (the landlord) confirmed receipt of each package as claimed by the tenant. The landlord stated that the tenant was served with the submitted documentary evidence package in person on August 1, 2017.

I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act and an order to suspend or set conditions on the landlord’s right to enter the rental premises are unrelated to the main issue of the 1 Month Notice to End Tenancy for Cause. The tenant was unable to provide sufficient details of how these claims were related to the application to cancel the 1 Month Notice. The tenant only stated that these claims were in reference to the landlord’s conduct regarding the 1 Month Notice dated May 31, 2017. I find that these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued cause, I dismiss these sections of the tenant’s claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

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 / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

This tenancy began on June 1, 2006 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated May 2, 2006. The monthly rent began as \$1,200.00 payable on the 1st day of each month. A series of Notice(s) of Rent Increase forms show that the current monthly rent is \$1,642.00. A security deposit of \$600.00 was paid on June 1, 2006.

Both parties agreed that on May 31, 2017, the landlord served the tenant with the 1 Month Notice via two female guest(s) at the rental unit. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2017 and that it was being given as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The 1 Month Notice lists the details of cause as:

It has come to our attention that Mr. L. is once again renting his suite out on AirBNB. He has been warned repeatedly that this is not permitted in his rental agreement. Since he chooses to ignore out written warnings, we have no choice but to issues a One Month Notice to End a Tenancy for Cause.

[Reproduced as written]

The landlord claims that she had a verbal conversation with the two female guest(s) in which they confirmed that they were renting his suite from the tenant on AirBNB. The landlord claims that another tenant was a witness to this verbal conversation, but did not provide any evidence to support this claim. The landlord also refers to a letter dated May 28, 2017 which was received from the tenant which states in part,

Pleases. Note: I will host 2 friends from France.

Until June 2nd.

They Are Air B+B guests.

[Reproduced as written]

The tenant has argued that this note was made in error and that the simple word of “NOT” was omitted by the tenant. The tenant has referred to the note given to the landlord dated May 29, 2017 which addresses the issue and states in part,

Please Note: A mistake was made on a notice dated May 28th/2017 regarding visiting Friends.

The last sentence should read.

They are NOT air B + B guests

I've gave you notice to prevent any misunderstanding.

An official letter will registered via Canada post to clarity this simple mistake that should have been simply solved by a question.

[Reproduced as written]

The landlord argues that the tenant has breached a material term of the tenancy agreement within clause #14, Use of Rental Unit which states in part,

The tenant and his guest must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial or business purpose. No public meetings or assemblies may be held in the rental unit. No business or commercial advertising may be placed on or at the rental unit or the residential property...

[Reproduced as written]

The landlord has reiterated that a conversation took place with the two female guest(s) who had confirmed verbally that they were staying as AirBNB guests.

The tenant has provided an affidavit by the two female guest(s) which states in part that they were not staying as paying guests and it states in part,

...Mrs. P. continue her interrogation and about our coming at R.J. She wanted to know how we got in contact with him from France through Airbnb. We completely refuted her allusion and indicated that this was totally different as he was helping us for free through out Parisian friend T.H...

[Reproduced as written]

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenant with the 1 Month Notice dated May 31, 2017 via his two female guest(s). The tenant was able to read and respond to the 1 Month Notice. As such, I find that although these are some argument over whether the two female guest(s) were “apparently living” with the tenant as per the Proof of Service document (RTB-34), I find that the tenant was sufficiently served to enable him to respond to the 1 Month Notice. The tenant had confirmed during the hearing that he received the 1 Month Notice from his two female guest(s) on May 31, 2017 and the tenant’s original application was filed on June 8, 2017 which is within the allowed 10 Day timeframe.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord has claimed that the tenant has breached a material term of the tenancy agreement by renting his suite out on AirBNB which is contrary to section 14 of the signed tenancy agreement.

The landlord has claimed that through a direct verbal conversation with the two female guest(s), they had admitted to being AirBNB guest(s) of the tenant. The tenant has disputed this and has submitted a signed affidavit by the two females in question who

have refuted this claim and that they were staying with the tenant for free and not for payment. The landlord has also referred to the note by the tenant dated May 28, 2017 in which the tenant notified the landlord that the two females were AirBNB guest(s). The tenant has disputed this claim stating that this was clarified in a note dated May 29, 2017 that it was an error on his part in drafting the note.

Although compelling, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence that the tenant's two female guest(s) were paying guest(s) through AirBNB. The landlord's claim a verbal conversation in which the two females confirmed that they were paying guests is refuted by the tenant's submission of affidavit material from the same two females. The landlord had argued that another tenant was a witness to the conversation, but the landlord has failed to provide sufficient evidence to support her claim through a witness or a signed statement. On this basis, I find that the tenant's application to cancel the 1 Month Notice is granted.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. The 1 Month Notice dated May 31, 2017 is set aside. The tenancy shall continue.

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: August 15, 2017

Residential Tenancy Branch