



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord confirmed that he had received the tenant's application and evidence. The landlord confirmed that he did not provide any documentary evidence for the hearing. As the landlord did not raise any issues regarding service of the application or the evidence, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

During the hearing the landlord testified that the tenant incorrectly spelled his first name in the application. Accordingly, I have amended the tenant's application to reflect the spelling provided by the landlord during the hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the testimony of the parties, this tenancy, based on an oral agreement began sometime around March 1, 2004 or 2005. The landlord resides upstairs, while the tenant resides in the rental unit below. Rent in the amount of \$800.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$550.00 at

the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice on October 26, 2018. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

The landlord testified that the 1 Month Notice was issued on the basis that renovations need to be completed, the landlord's family needs the space for their own use and the tenant has contributed to a rodent infestation.

In reply, the tenant testified that the landlord has issued the 1 Month Notice in an attempt to end the tenancy so the landlord can collect a higher rent from a new tenant. The tenant denied he conducted any of the grounds listed by the landlords on the 1 Month Notice.

Analysis

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant.

Two of the reasons provided by the landlord are not grounds to end the tenancy under a 1 Month Notice, but rather grounds to end a tenancy under a 2 Month Notice and 4 Month Notice. The landlord's allegation that the tenant contributed to a rodent infestation was not corroborated with documentary evidence. For these reasons, I find the landlord has failed to meet his burden in proving the grounds behind the 1 Month Notice. Consequently, the tenant's application to cancel the 1 Month Notice is upheld.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy will 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 26, 2018

Residential Tenancy Branch