



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES BC
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 19, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated August 7, 2019 (the "One Month Notice"); and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agents, J.W. and L.B., attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application package to the Landlord by registered mail, however, could not recall when the package was sent. The Landlord confirmed receipt on August 30, 2019. Pursuant to section 88 and 89 of the *Act*, I find the above document was sufficiently served for the purposes of the *Act*.

The Landlord's Agents testified that the Landlord's documentary evidence package was served to the Tenant by registered mail on October 8, 2019. A copy of the Canada Post registered mail receipt was submitted confirming the mailing took place on October 8, 2019. The Tenant stated that she has not yet received the Landlord's documentary evidence. Based on the oral and written submissions of the Respondents, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Landlord's documentary evidence on October 13, 2019, the fifth day after the registered mailing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice to End Tenancy for Cause (the "One Month Notice") dated August 7, 2019, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 15, 2018 once the Tenant took possession of the rental unit. The Tenant currently pays rent in the amount of \$2,460.00 to the Landlord which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,200.00, which the Landlord continues to hold.

The Landlord's Agents stated that the Tenant has been operating a short-term vacation rental which is a breach of the tenancy agreement, as well as contradicts the strata bylaws. The Landlord's Agents stated that the Tenant has been fined in the past and has paid the fine. The Landlord's Agent stated that on August 1, 2019, they attended the rental unit to serve the Tenant with a notice of entry form. After knocking on the door, the Landlord's Agents stated that they spoke to a male guest who stated that he and his family were occupying the rental for a short-term vacation rental.

For the above mentioned reasons, the Landlord's Agents stated that they served the Tenant with the One Month Notice on August 7, 2019 by attaching it to the Tenant's door. The Landlord's Agents stated that the One Month Notice has an effective vacancy date of September 30, 2019. The Tenant confirmed having received the One Month Notice posted to her door, however, could not recall what day it was received. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"Tenant has allowed an unreasonable number of occupants in the unit/site"

"The Tenant or a person permitted on the property by the Tenant has; significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health and safety or lawful right of another occupant or the Landlord, and put the Landlord's property at significant risk"

"The 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, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant, ad jeopardized a lawful right or interest of another occupant or the Landlord".

"Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

"Tenant has assigned or sublet the rental unit/site without the Landlord's written consent."

In response, the Tenant denied that she has been operating a short-term vacation rental in the rental unit. The Tenant stated that she has not received the Landlord's evidence and is therefore unable to respond to any of the Landlord's statements. The Tenant stated that the parties exchanged emails prior to the hearing and that the Landlord had sent her a link to a short-term vacation rental that does not resemble the Tenant's rental unit. The Tenant stated that she has friends attend her rental unit from time to time and that she travels for work purposes, therefore is not home for extended periods of time.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient cause to end the tenancy.

The Landlord's Agents served the Tenant a One Month Notice dated August 7, 2019 by posting it to the Tenant's door on the same date. The One Month Notice has an effective vacancy date of September 30, 2019. The Tenant was uncertain as to when she received the notice. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the One Month Notice on August 10, 2019.

In this case, the Landlord's Agents stated that the Tenant has previously been fined in relation to operating a short-term vacation rental. The Landlord's Agents stated that on August 1, 2019 the Landlord's Agents spoke to a male occupant who confirmed that he was occupying the rental unit as part of a short-term vacation rental. In response, the Tenant denied operating a short-term vacation rental.

According to the Residential Policy Guideline 19 (the "Policy Guideline") if a tenant is allowing their rental unit or space within their rental unit to be used for a commercial venture, such as a vacation or travel accommodation, a landlord may issue a One Month Notice to End Tenancy for a breach of a material term.

The Landlord has noted several reasons for cause on the One Month Notice. I find that the issue of operating a short-term vacation rental pertains more to a breach of a material term rather than the other reasons listed on the One Month Notice. I find that the Landlord's Agents have provided insufficient evidence to support the other causes to end tenancy which were noted on the One Month Notice.

According to the Policy Guideline #8; a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the Landlord has provided insufficient evidence to demonstrate that they notified the Tenant that her operating a short-term vacation rental was a breach of a

material term of the tenancy agreement. I further find that the Landlord's Agents provided insufficient evidence to demonstrate that they indicated that the problem needed to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Landlord did not provide adequate notice to the Tenant pursuant to section 47 of the *Act*.

In light of the above, I cancel the One Month Notice dated August 7, 2019. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful in her Application, I find that she is entitled to the recovery of the filing fee. I find that the Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated August 7, 2019 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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 22, 2019

Residential Tenancy Branch