



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated March 26, 2022 (1 Month Notice).

The tenant and the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlord confirmed that they received the evidence package from the tenant and that they had the opportunity to review the evidence prior to the hearing. The landlord also confirmed that they did not submit any documentary evidence for consideration for this hearing. I find the landlord was served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their email addresses during the hearing and were advised that the Decision would be emailed to both parties.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

Although the tenancy agreement was not submitted for my consideration, the parties agreed that the tenancy began on December 16, 2015. The current monthly rent is \$575.00 and is due on the first day of each month.

The tenant received the 1 Month Notice dated March 26, 2022 and disputed the 1 Month Notice on April 4, 2022, which is within the permitted 10 day timeline under section 47 of the Act. The landlord listed the following reasons on the Notice:

- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - put the landlord's property at significant risk
- Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
- 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

The details of the causes listed are stated as follows:

Details of the Event(s):
On March 25th 2022 a tenant from the building where [REDACTED] resides called me and told me her apartment had been broken into and that she had been robbed. A short time later the perpetrator of the break and enter was found in the breezeway beside the apartment where the crime took place with the stolen property of victim. The police attended to the building, arrested the perpetrator and took her away. During the investigation I found out that the perpetrator that was arrested had been staying with [REDACTED] prior to his incident.

The landlord testified that on March 25, 2022 they received a call about JG being in a breezeway with a lot of stolen items next to the unit where the stolen items were taken from. The landlord stated that they called the RCMP and had another person watch the other exit from the breezeway and that the process took several hours and that although most of the stolen items were recovered, some were ruined in the process.

The landlord stated that many tenants advised the landlord that the person who was taken away by the police, JG, was a person who had been staying with the tenant. The landlord also said that people have reported seeing the tenant pulling JG out of the building high on drugs.

The landlord was asked how many times they witnessed JG in the building, and the landlord stated 2 or 3 times in six months but that they are not there a lot.

The tenant responded to the testimony of the landlord by denying that on March 25, 2022 that the tenant allowed JG to enter the building and that it was several days before that JG was allowed in to decorate the tenant's unit. The tenant denied that JG was allowed into the building on March 25, 2022.

The landlord was asked if JG has been seen in the building since March 25, 2022. The landlord confirmed that JG has not been seen in the building since the incident on March 25, 2022.

The landlord confirmed that they did not have any witnesses to present at the hearing and did not have any witnesses that saw the tenant allow entry to the building on March 25, 2022.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this matter, I have a tenancy that was formed many years ago in 2015. I have no direct evidence of any witnesses who saw the tenant allow JG into the building on March 25, 2022. I find that it would be unfair to the tenant to end a long tenancy given that there are no witnesses who saw the tenant permit entry on March 25, 2022, no video evidence of such, and that JG has not been seen in the building since the incident. Given the above, I find the landlord has not met the burden of proof and as such, **I cancel** the 1 Month Notice dated March 26, 2022.

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

As nobody denied that JG was known to the tenant and stole items from a unit, I make the following caution against the tenant.

I CAUTION the tenant that if they permit entry of JG into the building during the remainder of the tenancy that a new 1 Month Notice may be issued and a copy of this Decision can be used as evidence of my caution.

Conclusion

I cancel the 1 Month Notice to End Tenancy for Cause dated March 26, 2022 due to insufficient evidence.

The tenancy shall continue until ended in accordance with the Act.

The tenant has been cautioned that if they permit JG into the building for the remainder of the tenancy, the landlord may issue a new 1 Month Notice and include a copy of this Decision as evidence of my caution.

This Decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 26, 2022

Residential Tenancy Branch