



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC-MT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on June 30, 2022. The Tenant confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenant on June 30, 2022 pursuant to Section 88(a) of the Act.

The Tenant testified that she attempted to serve the Landlord personally with the Notice of Dispute Resolution Proceeding package (the “NoDRP package”), but the Landlord would not accept the package. The Tenant then served the NoDRP package on the Landlord on August 3, 2022 by Canada Post registered mail. The Tenant referred me to the Canada Post registered mail tracking number as proof of service. The Canada Post website confirms delivery of the NoDRP package. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on August 8, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to more time to dispute the notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this periodic tenancy began on January 31, 2022. Monthly rent is \$800.00 payable on the first day of each month. A security deposit of \$400.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has 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, and the Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property. The effective date of the One Month Notice was August 1, 2022.

The Landlord provided further details of the causes to end this tenancy as:

The Tenant Let her visitor store stolen property In her Rental unit we have witness Testimony and Video evidence Picture Regarding The situation and her visitor caused Damage. In the Hallway. Big Holes In The Wall

The Tenant uploaded a letter dated December 5, 2022 from her doctor which specifies that she is being treated for a lung infection, and this will likely impact her ability to carry out daily activities including preparation required for her hearing.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

The Landlord did not attend this hearing although served with the application and NoDRP package. The Tenant testified to serving the Landlord with the NoDRP package by registered mail, and I found that service was perfected. The Landlord did not upload documentary evidence for this matter. I find based on the undisputed testimony of the Tenant that the Landlord has not proven on a balance of probabilities cause to end this tenancy. In accordance with this, I cancel the Landlord's One Month Notice and the tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 08, 2022

Residential Tenancy Branch