



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated February 7, 2009 and purporting to be effective February 28, 2009.

Both the landlord and the tenant, along with an advocate for the tenant, appeared and gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled. This requires a determination of whether the tenant or persons permitted on the property by the tenant:
 - significantly interfered with and or unreasonably disturbed other occupants or the landlord or;

- Failed to comply with a material term and did not correct the situation within a reasonable time after being given reasonable time to do so.

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act.

Preliminary Matter

Additional Evidence had been received from the landlord on March 16, 2009. However, it was confirmed by the landlord that, due to a misunderstanding of the process, this evidence had only been submitted to the Dispute Resolution file without serving it to the other party. Rule 4.1 of the Residential Tenancy Branch Rules of Procedure requires the respondent to serve the applicant with any documents upon which the respondent intends to rely at the hearing and this must be done within 5 days of the hearing. I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that *“copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible..”* I find that any consideration of the late evidence submitted by the landlord, that was not served on the applicant as required, would be unfairly prejudicial to the applicant.

Background and Evidence

Submitted into evidence by the tenant was a copy of the One-Month Notice to End Tenancy for Cause dated February 7, 2009. The landlord testified that the rental complex is a rooming house with shared kitchen and two bathrooms. The landlord testified that the One-Month Notice to End Tenancy was issued due to complaints received about the tenant significantly interfering with and unreasonably disturbing other residents by leaving the bathroom in an unsanitary state, smoking inside the premises and other disruptive conduct. The landlord testified that the terms of the tenancy prohibit smoking in the building, restricting it to the verandah and that the tenant has

repeatedly been warned not to smoke inside and throw cigarette butts out of the window. The landlord stated that this was a breach of a material term in the tenancy. The landlord also received reports that the tenant was responsible for leaving the upper bathroom in an unhygienic state with feces left on the fixtures, floor and wall. The landlord testified that the tenant was seen with waste matter on her person. The landlord testified that one of the former occupants had vacated the complex because of the tenant's conduct. No witness testimony by any of the complainants was given.

The tenant admitted to smoking on the premises despite being aware that this was only permitted on the verandah, but stated that it did not interfere with any of the other residents as she took care to keep the window ajar. No written warnings were received from the landlord. In regards to the feces contamination of the upper bathroom, the tenant vehemently denied being responsible for this and pointed out that two other residents were most likely the culprits. The tenant stated that she routinely cleaned the lower bathroom and saw the state it which it was left in by certain other occupants who also used the upper bathroom. The tenant detailed concerns that she had about how she had been treated by several of the other residents and their persistent neglect of hygienic practices. However, the tenant did acknowledge that anyone who was guilty of leaving traces of feces in the bathroom would be violating their tenancy responsibilities under the Act. That being said, the tenant adamantly denied that she herself had ever committed such a transgression and was being unfairly blamed.

Analysis

In regards to the complaint of smoking, it must be established whether or not there was a breach of a material term not corrected after a written warning to do so. In regards to the allegation that the tenant significantly interfered with or unreasonably disturbed the Landlord or others, it must be established that this happened and was of a magnitude sufficient to warrant an end to the tenancy for cause.

The tenant's actions of smoking inside the unit would only meet the criteria under 47(1)(h) of the Residential Tenancy Act if smoking was considered to be a material term of the tenancy. Also the landlord would have to prove that the tenant was given a written warning that was ignored. I find that although a copy of the tenancy agreement is not in evidence before me, from the testimony of both parties, it is clear that there was a rule against smoking inside the unit. However, I find that the landlord did not offer proof that the restriction on smoking qualified as a material term. To be considered a material term, it must go to the root of the contract and be of sufficient importance that a breach would justify the end of the entire tenancy agreement. In any case, the landlord did not issue a written warning to the tenant. Given the above I find that the threshold has not been met to support ending the tenancy for cause under section 47(1)(h).

If the tenant was proven to be responsible for the unsanitary bathroom, I find that this would be sufficient to meet the criteria of significantly interfering with and unreasonably disturbing other residents under section 47(1)(d). It would also qualify as a serious violation of section 32(2) of the Act which requires the tenant to maintain healthy conditions. However the burden was on the landlord to prove that the tenant was solely to blame for the feces problem and I find that the landlord did not succeed in this regard.

Given the above, I find that the Landlord has failed to show that the One-Month Notice to End Tenancy for Cause must be upheld. Accordingly, I grant the tenant's application to have the Notice cancelled.

Conclusion

Based on evidence and testimony above, I order that the One-Month Notice to End Tenancy for Cause of February 7, 2009 is hereby cancelled and of no force or effect

March 2009

Date of Decision

Dispute Resolution Officer