



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's request for an early end to tenancy and recovery of the filing fee. Both parties were represented at the hearing and were provided an opportunity to be heard and to respond to the other parties' submissions.

As a preliminary issue, the advocate requested this application be adjourned and heard with the tenant's application to dispute a *1 Month Notice to End Tenancy for Cause* set for July 9, 2009. As the landlord is requesting an early end to tenancy and the tenant's application is set for one month from today's date, I denied the advocate's request and proceeded with the landlord's application.

The landlord submitted late evidence that was received by the tenant on June 5, 2009 and the Residential Tenancy Branch June 8, 2009. I did not accept the landlord's late documentary evidence for the hearing; however, the landlord was permitted to provide verbal testimony with respect to the contents of the evidence.

Issues(s) to be Decided

1. Has the landlord established an entitlement to end the tenancy early?
2. Mutually agreeable terms to resolve the dispute.
3. Award of the filing fee.

Background and Evidence

Upon hearing the testimony of both parties and upon review of the documentation submitted on time, I make the following findings. The tenancy commenced approximately seven years ago. The rental unit is one of 32 units in the residential

property. The tenant is a person with disabilities and is on income assistance. In March 2009 the landlord detected evidence of mice in the tenant's rental unit. On March 10, 2009 the landlord issued a letter to the tenant advising her to downsize the amount of belongings from the rental unit by March 23, 2009 in order to facilitate the fumigation process. On March 26, 2009 the landlord issued another letter to the tenant indicating the pest control company had advised that the rental unit must be empty of the tenant's belongings and the landlord gave the tenant a deadline of April 15, 2009. On April 15, 2009 the landlord issued a *1 Month Notice to End Tenancy for Cause* (the Notice). The tenant did not dispute the Notice until May 28, 2009. Upon being served with the tenant's hearing package, the landlord made this application for an early end to tenancy.

The landlord submitted that the mice are a health and safety issue and the landlord must protect the tenants in the other 31 units. The landlord submitted that the tenant's rental unit is so cluttered with personal belongings the extent of the mice infestation, including nests, cannot be determined and it would be ineffective to exterminate while all of these belongings are in the rental unit. There have not been complaints of mice in other units; however, occupants of adjacent units have reported hearing mice in the walls.

The tenant submitted that she had rented a storage locker and has filled it to capacity in an effort to downsize the amount of property in the rental unit. It was not in dispute that a significant amount of belongings remain in the rental unit. The tenant claimed to be making an effort to sort and organize and remove the remaining belongings but was limited by her physical condition and income. The tenant pointed out that the landlord's letter of March 26, 2009 that seemed to indicate that all items would have to be removed from the rental unit which would not be reasonable.

During the hearing, an action plan to deal with situation was suggested and accepted by the parties. The parties were agreeable to the following action plan:

1. The landlord will determine the steps the tenant needs to take to prepare her rental unit for extermination of mice. The landlord will prepare a document outlining the steps the tenant must take to comply with these requirements and deliver the document to the tenant at the rental unit between 3:00 and 4:30 on June 12, 2009.
2. The rental unit will be inspected by the landlord and tenant on June 26, 2009 in order to determine whether the tenant has complied with the requirements specified in the document served June 12, 2009. The parties are at liberty to have witnesses present for the inspection and obtain evidence of the compliance or non-compliance.
3. If the tenant complies with the requirements as set out in the document served June 12, 2009 the tenancy shall continue and the 1 Month Notice will be of no effect on either party. If the tenant fails to comply, the parties may present their evidence for the July 9, 2009 hearing. The landlord is also at liberty to make its own application for dispute resolution with respect to enforcing the 1 Month Notice.

Analysis

While I appreciate the tenant's limited physical condition and income, the landlord has the obligation to protect the rights of other occupants in the residential property and ensure health and safety standards are adhered to. By failing to adequately prepare a

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rental unit for extermination, a tenant interferes with the landlord's obligations, and failure to take appropriate action may jeopardize that tenant's tenancy.

Although the issue of mice was identified in the rental unit in March 2009, I accept that the tenant has made some efforts to reduce the amount of possession in the rental unit. However, it is apparent the tenant's actions have been slow and not sufficient to date. I deny the landlord's request for an Order of Possession for early end to tenancy in order to provide the tenant with a final opportunity to adequately prepare the rental unit for fumigation by June 26, 2009. I hereby ORDER and make it binding upon both parties to fulfill the terms set out in the action plan outlined above.

In order to preserve her tenancy, the tenant is strongly encouraged to seek out any and all resources available to her in order to prepare the unit for fumigation by June 26, 2009.

The landlord will absorb the cost of the filing fee paid for this application.

Conclusion

The landlord's request for an early end to tenancy is dismissed. The parties are ORDERED to adhere to the mutually agreeable terms reached during the hearing, as outlined above.

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: June 09, 2009.

Dispute Resolution Officer