



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

CNC, OPC, MNSD, FF

Introduction

This hearing dealt with cross applications by the parties.

The landlord has filed an application seeking an Order of Possession for cause and to retain the deposit paid by the tenant. The tenant filed an application seeking to cancel the Notice to End Tenancy for cause. Each party has made application for filing fee costs.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for cause?

Is the landlord entitled to retain the deposit?

Is either party entitled to filing fee costs?

Background and Evidence

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant indicating that the Tenant was required to vacate the rental unit on July 1, 2009. The tenant rents a 1400 square foot, three bedroom duplex and lives with five children. Rent is \$1,138.00 per month due on the first of the month. A deposit of \$325.00 was paid in July 1992. The landlord purchased the rental unit three years ago. There is no written tenancy agreement or condition inspection from the start of the tenancy or at the point of purchase by the current landlord.

The reasons stated for the Notice to End Tenancy were that the Tenant is repeatedly late paying rent, the tenant has allowed an unreasonable number of occupants in the unit; that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; that 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 or the landlord, jeopardize a lawful right or interest of another occupant or the landlord; the tenant has caused extraordinary damage to the unit/site or property and that the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The Landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- going back to 2006 or 2007 the tenant has paid her rent late and continues to do so;
- that the tenant has people coming and going from the rental unit and has an additional occupant and has allowed people to sleep in the car port and a car outside of the rental unit;
- that the tenant smokes marijuana and that cigarette burns have been made to the deck coating, that a door is damaged and the cigarettes are stubbed out on the window ledges;
- that the tenant's son has engaged in drug dealing;
- that the tenant has items stored in the car port and a shed that present a risk;
- that the carpet is unreasonably dirty;
- that other tenants are disturbed by music and loud swearing

The landlord supplied copies of letters dated just prior to the issue date of the Notice, from two other tenants complaining of noise and problems. The tenant alleges that one of these tenants has rescinded his letter.

One letter of warning from the landlord dated September 13, 2005 informs the tenant that loud music is disturbing other tenants. This was followed by a second letter, three years later, dated November 10, 2008 telling the tenant that loud noise can not be tolerated and that people sleeping in the backyard during the summer; a recent incident where she allowed a minor to sleep in a car, repeated late rent payments and bringing people in without the landlord's written consent are causing problems and could result in the landlord taking action.

Two other tenant letters of complaint regarding noise, marijuana smoking, allegations of drug dealing and the number of occupants, a mess in the carport and the noise caused by visiting children are dated several days prior to the Notice to End Tenancy issue date; May 28, 2009. The landlord provided photographs which show the tenant's property stored in the car port and a shed. The landlord does not want these items stored and has asked the tenant to remove the belongings.

The landlord has applied to retain the tenant's deposit paid.

During the hearing it was agreed by the landlord that the tenant has not sublet the rental unit.

The Tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- that she has paid her rent in full and has been late at times but that since the notice was issued she has been on time with her rent;
- that she has two teenaged children who have visitors over for the night and who come and go from the rental;
- that her son does not deal drugs and that they do not smoke marijuana;
- that the marks in the deck are from furniture, not cigarette burns;
- that since her son returned home in November 2008 she has had to curb his behaviour but that landlord has not made her aware of any complaints made by other tenants;
- that they do smoke on the deck and use coffee cans as ash trays;

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has failed to provide sufficient evidence to show that this tenancy should end.

I find that the tenancy is one where the tenant had a history of paying the rent at times other than the first day of the month and that the landlord accepted these payments. This is supported by the landlord's November 30, 2008 letter which states that late rent payments have been tolerated in the past. In the absence of any written tenancy agreement or written direction by the landlord I find that the rent payments were made in a manner that, unit recently, was acceptable to the landlord. The tenant now understands that rent is due on the first day of each month and that she must pay her rent before or on that date each month.

The issues raised by the landlord as evidence supporting the end of this tenancy are worrying to the landlord and do indicate that this tenancy is experiencing problems. I do not accept the landlord allegation that the tenant's son is drug dealing as there is no evidence of this. There is no tenancy agreement which bans the tenant from smoking on the property or storing items. The tenant explained she does smoke outside. I find that the marks on the deck constitute damage that could be expected when people smoke in an area. The carpets are fifteen years old and beyond their useful lifespan for a rental unit.

I find that the September 2005 letter to the tenant has no bearing on the current problems reported by the landlord, given the passing of three years. The warning letter issued to the tenant in November 2008 provided the tenant with an indication that problems with the tenancy such as noise, extra occupants and late rent exist and must cease, but this letter fails to explain the possible outcomes if noise continues. On May 31, 2009 the landlord issued a Notice to End tenancy for Cause.

The tenant is reminded that the landlord has now issued one written warning and a Notice to End Tenancy. The tenant must consider this decision as a warning that further disturbance of other tenants could result in the landlord taking action under the Act. The tenant is now clearly aware of the concerns expressed by the landlord which

include the tenant allowing people to sleep in the carport and a car, noise, late rent payments and the state of the rental unit. The tenant is expected be able to have visitors to her rental unit and I find that six occupants is not an unreasonable number of occupants in this rental unit.

The landlord's application to retain the tenant's deposit is dismissed. The deposit must be disbursed as required by section 38 of the Act.

Conclusion

As I have determined that the landlord has failed to satisfy the legislative requirements to end a tenancy for cause and I grant the tenant's application to set aside the One Month Notice to End Tenancy.

This decision forms a written notice to the tenant that other tenants must not be unreasonably disturbed by the actions of the tenant or her visitors.

The deposit held in trust by the landlord must be disbursed as determined by section 38 of the Act.

As the tenant's application has merit I find that the tenant is entitled to filing fee costs in the sum of \$50.00 which may be deducted from the next month's rent owed.

Dated July 14, 2009.

Dispute Resolution Officer