

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on May 01, 2009. The tenant occupies the lower suite of the rental unit. The rent is \$650.00 payable on the first of each month.

On July 31, 2009, the landlord served the tenant with a one-month notice to end tenancy for cause.

The notice to end tenancy alleges that the tenant has allowed an unreasonable number of occupants in the unit, has significantly interfered with or unreasonably disturbed another occupant, has seriously jeopardized the health or safety or lawful right of another occupant, and has caused extraordinary damage to the unit.

The landlord has indicated on his notice to end tenancy that the tenant had allowed an unreasonable number of occupants. The landlord agreed that instead of the above, he needed to indicate that the tenant had breached the terms of the tenancy agreement with regard to the number of occupants in the suite.

The landlord has not filed any documentary evidence to support his reasons for wanting the tenancy to end. The landlord stated that the tenancy agreement stipulated that the tenant was the only allowed occupant of the rental unit and that the tenant has breached the contract by permitting another person to live with him, in the unit. The tenant stated that he had advised the landlord that he would have a room mate and the landlord had agreed. The landlord denied having agreed to this arrangement.

The tenant also stated that he did not have a written tenancy agreement while the landlord argued that the tenant had signed a tenancy agreement.

The landlord stated that the upstairs occupant reported the presence of cockroaches and the landlord contacted a pest control company to treat the problem. Upon giving the tenant adequate notice, the landlord attended the lower suite along with the pest control staff. The landlord stated that there were in excess of 40 cockroaches inside the lower suite. The tenant had not reported this to the landlord.

A second treatment after 30 days, was recommended, but prior to that date, the upstairs tenant reported the presence of cockroaches again. The pest control staff member stated that due to the presence of food in the lower unit, the cockroaches did not eat the bait thereby resulting in the partial success of the treatment. The tenant was advised to keep the unit in a sanitary condition. The tenant stated that the unit is now free of cockroaches and plans to let it stay that way. He stated that he did not report the problem for fear of being evicted.

The landlord stated that the extraordinary damage to the rental unit is the condition in which the tenant maintains the suite and which will require intense cleaning. The landlord did not provide any documentary evidence to support this claim.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has breached the terms of the tenancy agreement, has significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety or lawful right of another occupant, and has caused extraordinary damage to the rental unit.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord did not file a copy of the tenancy agreement and the tenant argued that he had the landlord's consent to have another occupant in the rental unit. Therefore, I am unable to determine whether the tenant breached the terms of the tenancy agreement. The tenant stated that his suite is now free of cockroaches and since this was the first infestation, I am not satisfied that the actions of the tenant i.e. not reporting the problem and keeping his unit in an unsatisfactory condition justify bringing this tenancy to an end.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated July 31, 2009. As a result, the tenancy shall continue in accordance with its original terms. The tenant would be wise to refrain from allowing another person to reside in the unit without the landlord's written consent.

I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

Dated September 28, 2009.

Dispute Resolution Officer