



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

INTERIM DECISION

Dispute Codes:

CNC

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 1 Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. 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

Should the 1 Month Notice to End Tenancy for Cause issued on August 7, 2009 be cancelled?

Background and Evidence

This tenancy commenced on May 1, 2009 for rent of a bachelor suite. Rent is \$900.00 per month.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause issued on August 7, 2009 was served on the tenant indicating that the tenant was required to vacate the rental unit on October 1, 2009. The reasons stated for the Notice to End Tenancy were that the tenant put the landlord's property at significant risk and that the tenant has engaged in illegal activity that has or is likely to damage the landlord's property.

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

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- on June 2, 2009 the landlord met with the tenant and told him to clean his unit and remove the excessive number of belongings from the unit;
- on August 5, 2009, in response to a flood originating in the tenant's unit, the landlord entered to find the rental unit filled with debris and in an unacceptable level of sanitation and safety;
- that on August 5, 2009 the tenant was given verbal instruction to properly clean the unit and that the landlord would return in two days to ensure the rental unit was in a proper state of cleanliness; and,
- that on August 7, 2009 the landlord returned to the unit and found it to be in an unreasonable state and that later that day a 1 Month Notice to End Tenancy for Cause was issued.

The landlord provided photographic evidence taken on September 18, 2009 during an inspection of the unit. These photographs provide evidence of belongings piled in the hall and throughout the rental unit and evidence of the state of the kitchen, which are in a state of poor cleanliness.

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

- that on August 5, 2009 he did cause a flood and that the landlord did attend at his rental unit;
- that since the landlord issued the notice he has made efforts to clean the unit and remove the excessive number of belongings from the rental unit.

The tenant's advocate stated that the tenant was not provided with adequate notice prior to the issuing of the notice. The landlord stated that they have given the tenant one month beyond that required under the Act for the tenant to bring his unit up to an acceptable health and safety standard and that if the tenant were to do so they would allow the tenant to remain in the unit. The tenant stated that since September 18, 2009 he has further cleaned his unit and that on a daily basis he has removed items from the unit.

The landlord stated that they are concerned water from the flood remains under the tenant's belongings and may cause degradation of the unit.

During the hearing the tenant provided agreement that the landlord may enter the rental unit on October 2, 2009 for an inspection to determine if the tenant has complied with the landlord's request that he bring the unit to an acceptable standard of sanitation and safety.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided evidence that the tenant has allowed his rental unit to deteriorate to a point where it has failed to meet expected levels of sanitation and safety. Section 32 of the Act provides:

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The photographic evidence and the tenant's testimony provide confirmation of what I find to be a health and safety problem within the rental unit. There is no doubt that the tenant is now well aware of the need to bring his rental unit up to an acceptable level of sanitation and that he must remove belongings that impede reasonable access into and through the rental unit so that a safety concern does not exist.

I have considered the notice issued on August 7, 2009; two days after the landlord entered the rental unit. I have no evidence before me that at any time prior to August 7 the tenant given written warning or indication that a failure to clean his unit and bring it to an acceptable standard could place his tenancy in jeopardy.

The photographs taken on September 18, 2009 show the rental unit in what I have determined is much the same state as it was described to be on August 5, 2009. There is mould growing on the toilet tank, access through the unit is blocked by garbage and belongings and the kitchen is in an unsanitary condition.

I find that this matter will be adjourned in order to allow the parties time for inspection of the rental unit. This hearing will reconvene on October 26, 2009 at 12:00 p.m., at which time I will hear testimony in relation to the current state of the rental unit, whether the tenant has brought the rental unit up to an acceptable level of sanitation and safety standard as required by the Act and whether the notice to end tenancy issued on August 7, 2009 should be cancelled.

The landlord is at liberty to issue the tenant written notice to enter the rental unit, as required under section 29 of the Act, in order to inspect the unit prior to the reconvened hearing.

A copy of the Notice of Reconvened Hearing including the hearing conference call instructions is included with this decision.



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Conclusion

This hearing will reconvene on October 26, 2009 at 12:00 p.m.

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: October 05, 2009.

Dispute Resolution Officer