



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a 1 Month Notice to End Tenancy for Cause.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on September 1, 2006 as a month to month tenancy with a current monthly rent of \$468.00 due on the 1st of the month with a security deposit of \$225.00 paid on September 1, 2006.

The landlord submitted into evidence:

- A copy of a 1 Month Notice to End Tenancy for Cause issued October 18, 2009 with an effective vacancy dated of November 30, 2009, citing the following causes: the tenant allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk; 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, and jeopardize a lawful right or interest of another occupant or the landlord; tenant has caused extraordinary damage to the unit; and the tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit or property;
- Copies of electric billing history; a hydro bill; a cable bill; a property insurance statement; a property tax notice;
- A handwritten letter from the landlord outlining her claims against the tenant;
- 14 photographs; and
- A receipt for photographs.

The tenant submitted into evidence the following documents:

- A copy of a “Shelter Information” document stating the tenant is renting a unit that allows two tenants;
- A copy of a document signed by the landlord but not by the tenant listing a number of terms related to the tenancy, some of which are contrary to the *Act*; and
- A copy of a rent receipt dated May 27, 2009.

The landlord’s written and oral testimony provided several allegations against the tenant including stating the tenant had: removed a light bulb from a common area; continuously unlocks the front door; painted a common area with black paint; altered a two cable boxes; has been using the back stairs as access to his unit; has drug dealers attend his rental unit and have offered to sell the landlord drugs; plays music loudly, has substantial garbage on his deck; had caused a flood from the shared bathroom; and has allowed a person to live in the shared bathroom.

The landlord’s witness confirmed that there are times when he cannot hear his television because the music is very loud. The witness confirmed the applicant tenant has a lot of “garbage” on his deck and that it spills over on to the witness’s space; that the tenant and his friends use the back stairs to access the applicant tenant’s rental unit. The witness testified that the person living in the shared bathroom admitted he was living there but the witness did not confirm that it was the applicant tenant who allowed him to stay there.

The tenant’s position is that the landlord has provided no evidence supporting any of her claims against the tenant. Specifically, the tenant’s agent contends that the tenant has not allowed anyone to “live” in the shared bathroom and the landlord has presented no evidence to support the claims of removing the light bulb, painting the common area, causing the flooding, changes to cable service, or any violent incidents.

The tenant’s agent does concede that the tenant has been unlocking the front door, as he used to be able to use the back stairs for 3 years as his access until the tenant on the main floor moved in. As a result the tenant, who has Cardio Pulmonary Obstructive Disorder, has no way of knowing if he has guests arriving since there is no door bell for his rental unit. This means he must go up and down the stairs multiple times to let guests in.

Analysis

Section 47 of the Act allows a landlord to end a tenancy for cause as outlined by the notice provided to the tenant. In the case of an Application for Dispute Resolution to cancel a notice to end tenancy for cause, the burden of proof is on the landlord to show the Notice meets the requirements of the legislation.

For most of the causes listed by the landlord as cause, I find that the landlord has failed to substantiate her claims, as follows:

Cause	Evidence
Tenant has allowed an unreasonable number of occupants in the unit	The shelter document shows that two tenants can be in the unit; The landlord has failed to provide evidence that confirms this tenant has allowed an individual to live in the shared bathroom
Tenant or guest has seriously jeopardized the health or safety or lawful right of another occupant or the landlord	The landlord has provided no corroborating evidence to support any claims of this nature.
Tenant has engaged in an illegal activity that has: damaged the landlord's property; adversely affect the quiet enjoyment, security or physical well-being of another occupant or landlord; or jeopardized a lawful interest of another occupant or the landlord	The landlord has provided no evidence that the tenant committed any illegal activities. As there is no evidence of an illegal activity the subsequent effects of that activity cannot be relied upon by the landlord as cause to end the tenancy.
Tenant has caused extraordinary damage to the unit	The landlord provided no evidence that the duct tape repairs to the plumbing were made by the tenant.
Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit	The landlord has provided no corroborating evidence to support any claims of this nature.

While the landlord has provided corroborating evidence to support her assertion that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, she has not provided any evidence that she provided the tenant any opportunity to correct the behaviour of playing music too loudly and as such she cannot now rely on this cause to end the tenancy.

Conclusion

Having found the landlord has failed to meet the burden of proof that cause exists to end the tenancy, I find the tenant is entitled to cancel the 1 Month Notice to End Tenancy for Cause issued on October 18, 2009 and that the tenancy remains in full force and effect.

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: December 10, 2009.

Dispute Resolution Officer