

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This tenancy started on July 1, 2008. On April 26, 2010, the Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated April 26, 2010. The grounds stated on the Notice were as follows:

- Tenant or a person permitted on the property by the tenant has:
seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord said that annual inspections were scheduled to be made of all suites on the 13th floor of the rental property on February 3, 2010. The Landlord said, however, that the Tenant asked for repeated extensions of time to do the inspection so she could get organized. The Landlord said that the Tenant was granted extensions to February 10th, then to February 17th, then to March 17th, then to March 22nd and then to March 27th. The Landlord said she finally gave the Tenant a Final Notice to Schedule a Condition Inspection for March 29, 2010.

The Landlord said when she did the inspection of the Tenant's suite on March 29, 2010 there were so many boxes and other articles on the floor of the rental unit that she had difficulty walking through it. The Landlord said that she could not access the kitchen appliances, the bathroom or the balcony. The Landlord also said that the Tenant had boxes on the top of the stove and other articles in between the refrigerator so that heat from it could not dissipate. The Landlord said that as a result of this inspection, the Tenant was given a written warning dated April 5, 2010 that she was in breach of a term of her tenancy agreement to maintain health, cleanliness and sanitary standards and to prevent and rectify any hazards. The letter also advised the Tenant to remove any excess boxes and garbage from her suite and storage area by April 26, 2010 or the Landlord would end the tenancy. The Landlord said a follow up

inspection was done on April 26, 2010 and she found the suite to be in substantially the same condition that it was in on March 29, 2010. The Landlord provided copies of photographs she said she took at the time of the follow up inspection.

The Landlord argued that the condition of the Tenant's suite made it unsafe for her and other residents of the rental property in the event that the incendiary items on the stove should catch on fire and spread to the large amount of other items throughout the rental unit. The Landlord also argued that the Tenant would have difficulty exiting the rental unit in the event of an emergency due to the large amount of items cluttering the floor and obstructing exits. The Landlord claimed that she has been advised by a family member of the Tenant's that this has been an ongoing issue with the Tenant. The Landlord also claimed that a handyman made a repair in the rental unit sometime between October 2009 and the first inspection and advised her that the rental unit was cluttered at that time.

The Tenant claimed that the rental unit was full of boxes because she had brought them from her storage area(s) to sort out but that she had removed too many to fit in her small bachelor suite. The Tenant said she did not have enough time to organize all of the boxes at the time of the first inspection and although she returned some of them to her storage area, she still had more items that she had removed from the boxes to organize. The Tenant claimed that since the follow up inspection on April 26, 2010 she has packed up more items.

The Tenant argued that the Landlord exaggerated about not being able to move through the rental unit. The Tenant also argued that the items she has on the stove top are not a fire hazard because she does not use the stove and that there are no items beside the refrigerator. The Tenant admitted that she has a lot of stuff but said that it is mostly organized in her storage areas on the rental property.

Analysis

RTB Policy Guideline #8 (Unconscionable and Material Terms) says at p. 2 that "a material term is a term that the parties agree is so important that the most trivial breach of it gives the other party the right to end the agreement." I find that the terms of the tenancy agreement (#17 and #26) referred to by the Landlord in her letter to the Tenant dated April 5, 2010 are not material terms. In particular, I note that clauses in question say nothing about them being material terms whereas clause 12 of the agreement (misrepresentation and failure to disclose information) does specifically refer to that term as being a material term the breach of which would result in the tenancy being ended. Consequently, I find that the Landlord cannot rely on this ground to end the tenancy.

I do find however, that as of April 26, 2010 the rental unit was excessively cluttered rendering it a potential health hazard for the Tenant and a safety risk for the rest of the occupants of the rental property. Although the Tenant argued that the articles were only there temporarily so that she could organize them, I find it more likely that this

situation has likely been ongoing for some time. The Tenant knew on February 2, 2010 that the Landlord wanted to inspect the rental unit but she delayed the inspection for 2 months to give her time to remove the clutter. By March 29, 2010 (the first inspection), the rental unit was still excessively cluttered and little had been done to rectify the situation a full month later during the 2nd inspection on April 26, 2010. Furthermore, the Landlord claimed that when an inspection of the fire and heat alarms was done on May 19, 2010, the inspector also reported to her that the rental unit was excessively cluttered.

Although the Tenant claimed that much of the clutter has been removed since May 19, 2010, she provided no evidence of that. Therefore, I find that in failing to remedy the excessively cluttered condition of the rental unit after being given notice and a reasonable opportunity to do so, the Tenant has seriously jeopardized the safety of other occupants of the rental property and put the Landlord's property at significant risk. Consequently, I find that there is insufficient evidence to support the Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated April 26, 2010 and it is dismissed without leave to reapply. The Landlords did not request any orders at the hearing.

Conclusion

The Tenant's application is dismissed without leave to reapply. The One Month Notice to End Tenancy dated April 26, 2010 remains in 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: June 23, 2010.

Dispute Resolution Officer