

DECISION

Dispute Codes MT, CNC, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the Notice to End Tenancy for cause and to allow more time to cancel the Notice to End Tenancy.

The tenant served the landlord by registered mail on June 15, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

The tenant has applied for more time to cancel the Notice to End Tenancy. Neither the tenant; the landlord or the landlords witness could remember the exact date the One Month Notice to End Tenancy was served to the tenant. All parties agreed during the hearing that it was likely to have been served on May 31, 2010. The tenant had 10 days to file an application to dispute the Notice. The tenant filed her first application on June 09, 2010 just within the 10 allowable days. However, the Residential Tenancy Board could not contact the tenant concerning her application and the tenant had to file a second application on June 15, 2010. Although this second application was filed on the 15 day after receiving the One Month Notice I have allowed the tenants application to

be heard as she did originally file to dispute the Notice within the 10 days allowed under the Act

Issues(s) to be Decided

- Is the tenant entitled to cancel the One Month Notice to End Tenancy for cause?

Background and Evidence

This month to month tenancy started on September 15, 2009. Rent for this one bedroom unit is \$500.00 per month and is due on the first of each month. The tenant paid a security deposit of \$250.00 on September 15, 2009.

The landlord testifies that she served the tenant with Notice to End Tenancy for cause the reasons given on this notice are:

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, safety or lawful right of another occupant or the landlord
- Put the landlords property at significant risk
- The tenant has caused extraordinary damaged to the unit, site or property.

The landlord states the other reasons given on the Notice are withdrawn.

The landlord claims the tenant has disturbed other occupants of the building both commercial and residential. These other tenants feel threatened by the tenant and her guests and are intimidated by her when they use the rear of the building. The landlord claims there are people coming and going from the tenants unit every 10 minutes or so

and the tenants' boyfriend who is residing with the tenant is operating a computer business from the unit.

The landlord claims the tenants' window has been broken three times and the third time the tenant did not notify her about the breakage. The landlord claims the tenant told her it was a drunken person who broke the window. The landlord claims the siding of the tenants unit has also been damaged. The landlord claims her insurance company have now cancelled her policy and will no longer insure her and potential buyers are put off because of the situation with the tenant. The landlord states she thinks the tenant is a target for persons damaging the building.

The landlord claims the tenant has caused extraordinary damage to the building by blocking the pipes with animal hair. She claims the tenant has animals in her unit dispute it being a no animal rental. She claims the tenant must wash her dogs or cats in the bathtub and their hair has caused blockages which have resulted in flooding to the rented business downstairs. The ceilings have now had to be cut away to get at the blocked pipes which has caused further damage to the building.

The landlord requests an Order of Possession based on the One Month Notice to End Tenancy to take effect on September 01, 2010.

The tenant disputes the landlords' claims. The tenant states she does not disturb the other occupants of the building and is always friendly towards them. She claims they do not appear to be intimidated by her as they stand at the back of the building near her unit to smoke. The tenant claims she has her child staying with her who has friends that do come to visit all the time. The tenant claims her boyfriend does not live in her unit but does visit and stay over. He works with trading computers but does not operate a business from the unit.

The tenant disputes that she is responsible for the broken window. She does not dispute that it has been broken three times or that the siding has been damaged but

states this is caused by drunks who frequent the back alley and who are responsible for this damage. The tenant states on one occasion she saw someone causing this damage and she called the police. This person was arrested and charged and she gave the file number to the landlord.

The landlord called her witness who states that he has seen the broken window and damage to the siding but did not see who caused the damage. The landlord's witness stated that another tenant has spoken to him about her concerns with this tenant and that she makes her feel uneasy.

The tenant cross examined the landlord's witness and asked him if he had ever seen computers in her unit. The witness replied that he did not know how many computers she had in her unit, he had only seen one person sitting playing a game on one when he came to her unit.

The tenant claims that she is not responsible for flooding in the downstairs office. She claims her bathtub was blocked and the plumber came to fix it. The tenant states she thinks the pipes in the building are old and she should not be held responsible for every blockage in the building. The tenant claims one of the blockages was caused by a hair net which was not hers and by a build up of hair. The tenant disputes the landlord's claim that she washes her dog or cats in the bathtub and claims that other tenants have had similar problems with their bathtubs being blocked.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any

corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy.

The landlord has not provided sufficient evidence to show the tenant has disturbed other occupants of the building, no witness statements or witnesses have come forward to support the landlords claim. The landlord has provided no evidence that the tenant has significantly jeopardized the health, safety or lawful right of another occupant or that the tenant has put the landlords property at significant risk. The landlord has provided no evidence to support her claim that the tenant is responsible for the flooding or the blocked drains and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated May 31, 2010 is cancelled and the tenancy will continue.

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: July 27, 2010.

Dispute Resolution Officer