



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the One Month Notice to End tenancy for cause and seeks a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on June 21, 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 agents for the 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:

Issues(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both Parties agree that this month to month tenancy started on February 01, 2005. A tenancy agreement is in place and rent for this unit is \$320.00 per month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on June 16, 2010 with an effective date of July 31, 2010. The reasons given on this Notice are:

The tenant or a person permitted on the property by the tenant has:

- a) significantly interfered with or unreasonable disturbed another occupant or the landlord.

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The tenant has engaged in an illegal activity that has, or is likely to:

- b) adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord and,
- c) the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord states she withdraws this reason given on the Notice and wishes to proceed with the first and second reasons only.

The landlord states the tenant has become aggressive and physical with other tenants. She has frightened other tenants of the building with her erratic behaviour and on one occasion she twisted the arm of an elderly tenant and had to be forced to let go by a member of staff. The landlord agrees that the incidents are two years apart and states she feels the tenant does not enjoy taking her medications which cause these incidents to happen. The landlord expresses some fears for the tenant herself. She agrees that since the tenant has returned after her treatment that her behaviour has not raised any concerns but the landlord states she has concerns that the situation will repeat itself.

The landlord states the tenant walks around in her pyjamas and bothers other tenants by smoking in her unit, on her balcony and throughout the building.

The landlord has provided statement letters from other tenants who have witnessed the tenants' erratic behaviour and one from the tenant who suffered a twisted wrist from the tenant. These letters are undated and one refers to the tenants' behaviour in November 2008.

The tenants' agent states that the tenant has not been given a warning letter by the landlords until she received one with the One Month Notice. This letter states that if there is another incident a Notice to End Tenancy will be enforced. However the Notice was given to the tenant at the same time as the letter.

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The tenants' agent also states that although the landlord has withdrawn her third reason on the notice it still has a bearing on the tenant. He claims this reason was given because the tenant was asked not to smoke when in fact the building became none smoking after her tenancy started and all tenants in this position were granted grandfather status with regard to smoking. He claims this refusal by the landlord to allow the tenant to smoke contributed to her behaviour.

The tenants' agent claims if the tenant chooses to walk around the building in her pyjamas she is entitled to do so and it is not an illegal act.

The tenants' agent claims the other incidents happened over two years ago and no warning letters were given to the tenant at that time. He also claims that the tenant was deemed to be well after her last bout of treatment and was therefore well enough to return to her unit. He states she is now provided with nursing support twice a day to ensure she takes her medications and a home worker is assigned to visit her approximately twice a week to ensure she is able to take care of her needs. He claims the nurse would notice if the tenants behaviour changed or if her medication was not working correctly and would take action to rectify this. The tenants' agent states there have been no ongoing patterns of erratic behaviour from the tenant and disputes the reasons given on the One Month Notice.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. 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 provided no evidence to show the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord with the exception of isolated incidents that occurred over two years ago and one recent incident due to her medication not being taken.



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The landlord has provided no evidence to show the tenant has engaged in an illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord. I further find that the tenant is now receiving medical support to ensure a repeat of these incidents does not occur in the future. 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 June 16, 2010 is cancelled and the tenancy will continue.

As the tenant has been successful in setting aside the Notice, she is entitled to recover her \$50.00 filing fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

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: August 13, 2010.

Dispute Resolution Officer