



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause and allow the tenant more time to make an application. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started on August 1, 2010 with the monthly rent of \$1400.00. The tenants paid a security deposit of \$700.00. On October 27, 2010 the landlord served the tenant with a Notice to End Tenancy for Cause: repeatedly late paying rent; allowed an unreasonable number of occupants in the unit/site; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

Documentary evidence from the landlord reflects that the landlord believed that the hearing should not go forward as they were not served the hearing documents within 3 days as per the Act.

The landlord testified that the tenants have continually been late paying rent and utilities since they moved in and that the tenants brought a pet into the unit and the tenancy agreement clearly states no pets; the pet has since been removed. The late rent payments were a result of the ministry sending payments late and that matter has been resolved. The tenant paid \$50.00 towards the utility bill on October 29th but still owes the landlord \$270.00 for utilities. The landlord stated that the tenant in the basement suite moved out due to the heavy odour of cigarette smoke coming from the tenant's rental unit and they are having a difficult time re-renting the basement suite due to the cigarette smoke smell; the tenancy agreement clearly states no smoking.

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The landlord is still waiting for 2 of the primary tenants to sign the tenancy agreement and the landlord claims that there 'appears' to be an inordinate number of tenants living in the same suite although this claim is un-substantiated.

The tenants testified that there was a problem in the beginning with the ministry sending their rent to the landlord but that all of the required paperwork has now been completed and rent payments are being sent on time and directly to the landlord. The tenant did agree that she owes money towards the utilities but did not want to pay additional monies until the landlord provided receipts for the cash payments she had already made. It was clarified in this hearing that with each cash payment from the tenant the landlord must provide the tenant with a receipt. The tenant stated that she had the money available to pay the balance of the utilities and will do so today.

The tenant stated that they do not smoke in the rental unit but outside. The area where the tenants stand to smoke outside may be beside a window to the lower unit and the tenants will make every effort to move away from the windows so that tenants in the lower unit are not disturbed by the cigarette smoke. The tenant also stated that as part of their culture they burn ceremonial sage and that recently they have been burning sage in the rental unit. The tenant was agreeable to finding an alternate location to perform this ceremony so that other tenants in the building are not disturbed by the burning sage.

The tenant was apologetic to the landlord for the fact that 2 of the tenants still needed to sign the rental agreement and the tenant will ensure that this gets completed. The tenant stated that she no longer owns a cat and that only the 3 people noted on the lease reside at the residence.

The tenant also brought up the matter of having no heat in all of the rooms in the rental unit and understands that when the landlord provides the tenant with 24 hour written notice to enter the suite, that the tenant needs to work with the landlord in this regard so that the landlord can pro-actively address such concerns.

Analysis

In regards to the landlord not receiving the hearing documents within 3 days, I find that the landlord was appropriately served per:

Residential Tenancy Branch Policy Guideline

10. ARBITRATOR'S ORDERS REGARDING SERVICE

The Legislation provides that an arbitrator may make the following orders:



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That a document not served in accordance with the service sections of the Legislation has been sufficiently given or served for the purposes of the Legislation.

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

Clearly if such behaviours were to occur again in the future and another Notice to End Tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

Conclusion

I therefore allow the tenant's application and set aside the Notice to End Tenancy for Cause dated October 27, 2010. As a result, the tenancy shall continue in accordance with its original terms.

I hereby dismiss the landlord's application with leave to reapply.

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: November 26, 2010

Dispute Resolution Officer