



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, ERP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy and for an order to have the landlord complete emergency repairs.

The hearing was conducted via teleconference and was attended by the tenant and two witnesses and the landlord's agent and witness.

During the hearing the landlord's agent noted that the Month Notice to End Tenancy for Cause issued on September 30, 2010 was incorrect and that is why she issued the 2nd 1 Month Notice to End Tenancy for Cause dated October 6, 2010. As such, the landlord withdrew the original notice during the hearing.

The parties had indicated the tenant had provided the landlord with more evidence on October 29, 2010 and that in response the landlord provided additional evidence on November 1, 2010. As both parties had discussed the items during the hearing and their contents, I accept the late evidence provided by the parties and have considered it in this decision.

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; to an order directing the landlord to make emergency repairs; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in December 2009 as a month to month tenancy for a monthly rent of \$458.00 due on the 1st of the month and a security deposit of \$300.00 was paid in June 2006. The parties have had previous tenancies in other units in the residential property.

The tenant provided the following documents in evidence:

- A copy of a 1 Month Notice to End Tenancy for Cause dated October 6, 2010 with an effective vacancy date of November 5, 2010 citing the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- A handwritten summary of issues dated October 6, 2010;
- A copy of a handwritten letter dated September 30, 2010 address to the Housing Society Board of Directors requesting the Board reconsider her eviction notice; and
- 18 photographs showing mouse feces and traps throughout the rental unit and storage areas.

The landlord submitted the following additional documentary evidence:

- A copy of comments made by the landlord's agent to the board dated October 4, 2010 regarding the activities for which the landlord is seeking to end the tenancy, including the landlord finding a blow torch with knives and a pop bottle with the bottom cut out and some evidence of pot in the sink and the tenants complaints regarding the mice problem including;
- A letter dated October 5, 2010 from the landlord to the tenant advising the tenant that the Board of Directors had considered her request to have the Notice to End Tenancy overturned but had rejected her request as the building has zero tolerance and that she had signed an addendum to her tenancy agreement agreeing to the policy;
- A letter from the landlord indicating the uncleanliness in the rental unit and potential for contributing to the mouse problem;
- 7 photographs of the exterior of the rental unit and a storage area;
- An email from a pest control contractor to the landlord dated October 12, 2010 indicating that he has made 15 visits to the rental unit in the last 10 months;
- A written statement from the maintenance person regarding his entrance into the rental unit in early May 2010 to look at the tenant's fridge as she had concerns about its functioning. The statement goes on to say that he smelled something burning in the laundry room that turned out to be incense and that he then called the administrator in and they found a propane torch some burnt knives and other drug paraphernalia;
- A copy of the addendum to the tenancy agreement noting the tenant had agreed to conditions for crime free housing, including the commitment to not engage in any drug-related criminal activity;
- A copy of a letter from the landlord to the tenant dated September 29, 2010 confirming that she had seen ashes and marks on the stove element where knives were put for heating up knives for "smoking pot....hash....or whatever" and that this was in addition to the finding in May of "hot knives and a blow torch" in the laundry room; and

- A copy of a unit inspection report signed by the landlord's agent and the tenant, in the kitchen section there is a notation that states "Hot knifing evidence in stove top".

The landlord testified that in May 2010 the maintenance man found some items in the tenant's laundry and that he had contacted the agent witnessed with the maintenance man some "hot knives"; a blow torch; a pop bottle with the bottom cut out and some pot in the sink.

The landlord noted the tenant indicated that these items were not hers but that a girlfriend had been staying with her and they were hers. The tenant disputes these statements were made.

The landlord testified that when she then found the ashes in the stove element and the marks on the element where knives would have been heated she stated to the tenant "you know I know what this is right?" and that the tenant responded "yeah". The tenant disputes these statements were made.

The landlord contends that she then went and spoke to a board member who confirmed a 1 Month Notice to End Tenancy should be issued to the tenant. That board member attended the hearing and confirmed that he met with the agent immediately after the inspection and agreed a Notice was to be issued.

The tenant and her two witnesses both testified that the tenant does not smoke "pot". One witness stated that he has know the tenant for at least 6 years and that she does not smoke pot and that she doesn't even like him to drink beer. The other witness testified that she has known the tenant for about a year and that she does not smoke.

The tenant testified that prior to her moving into the rental unit the child of the previous renter had had bet mice and that there had been an infestation left behind and she wants the landlord to correct this situation.

Both parties agreed that they had been working with a pest control contractor but that the problem still persists. The landlord states that because there are children in the unit the contractor is restricted in what he can use to complete the extermination and that he has done all he can and that all that can be done now is to be diligent in the use of traps and in creating an environment that does not attract the rodents. If the rodents are not attracted to the area they will leave on their own.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy if a tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

A notice given under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Section 53 of the *Act* states that should the effective date in the notice be earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find, based on the balance of probabilities that the landlord's testimony and witness evidence, including the inspection report signed by the tenant acknowledging the finding of "hot knifing evidence in stove top" establishes that the tenant or a person permitted in the rental unit by the tenant has engaged in an illegal activity.

I also find that as all the residents in the residential property, including this tenant, were aware and are required to commit to the crime free housing addendum in the tenancy agreement this illegal activity would jeopardize a legal right or interest of the landlord and other occupants.

As such, I find the landlord has established cause to end the tenancy in accordance with Section 47 of the *Act*. I note, however, that the effective vacancy date of the notice given by the landlord to be amended to November 30, 2010, in accordance with Section 53(2). I also note here the landlord did not request an order of possession during the hearing.

As I have found the landlord has established cause to end the tenancy, I make no findings on the tenant's application to have the landlord make any emergency repairs.

Conclusion

Based on the above, I dismiss the tenant's application in its entirety. I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on October 6, 2010 to be in full force an effect and as noted above is effective November 30, 2010.

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 03, 2010.

Dispute Resolution Officer