



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MT

Introduction

This matter dealt with an application by the Tenant to cancel a 1 Month Notice to End Tenancy and for more time to make the application.

At the start of the hearing the Tenant said he had enough time to make the application and he thought the box on the application for more time was for more time if he had to move out of the unit. The Tenant withdrew the application for more time to make the application.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by register mail on November 13, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started in December 2009 as a month to month tenancy. Rent is \$500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250.00 in December, 2009.

The Landlord said she issued the Notice to End Tenancy for three reasons. She said the first reason was that the Tenant had smoked in the door way of the unit and as a result the smoke entered the unit and then entered her families living quarters. She said there is a no smoking clause in the tenancy agreement. The Tenant agreed that there was a no smoking clause in the tenancy agreement. The Tenant said he did smoke in the doorway with the door open when it was cold outside. The Tenant continued to say that he has quit smoking and he has not smoked on the property in over a month. The Landlord provided a Witness K.B. that said he saw the Tenant smoking in the doorway with the door open.

The Landlord continued to say that the second reason for the Notice to End Tenancy was that the Tenant did not handle his garbage as agreed to and as a result loose

garbage was spread in the yard. The Tenant said he had put extra garbage out beside the garbage can and animals got into it. He continued to say that his garbage as well as the Landlord's garbage had been spread in the yard by animals. He also said that he now keeps any extra garbage that he cannot get into the garbage can inside until garbage day.

The Landlord said the third reason she issued the Notice to End Tenancy was that the Tenant had interfered with her quiet enjoyment of her property. She said the Tenant approached people calling on her family and that he told neighbours about her husband's health issues. The Tenant said that the incidents that she spoke of were cases that he was trying to be helpful. The Tenant said he did not mean any harm when he approached people at the Landlord's door, he thought they were looking for assistance and when he told the neighbours about the Landlord's husband's health issues he did it out of concern for the Landlord's husband.

The Tenant said the Landlord was creating these issues falsely, because he believes that she didn't like it when he asked the Landlord's son to turn his music down and that he made some other requests of the Landlord. These requests included not using the laundry in the night time and for the Landlord's son not to play his music so loud.

The Landlord asked for an Order of Possession during the hearing if the Tenant's application to cancel the Notice to End Tenancy is not successful.

Analysis

Section 47 (1)(h) says a landlord may end a tenancy by giving a notice to end tenancy if the tenant has failed to comply with a material term of the tenancy agreement and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice.

I find that the Tenant did smoke in the doorway of the unit with the door open, which is a material breach of the tenancy agreement, but the Tenant said he has quit smoking and has not smoked on the property in over a month. The Landlord did not contest the Tenant's testimony about not smoking in the last month therefore: I find the Tenant has corrected this material breach of the tenancy agreement in a reasonable time after the landlord gave written notice.

With regards to the garbage issue, I find that the Tenant has taken corrective action so that the garbage is not available for animals to get into it. As well the Tenant testified that animals have got into both the Tenant's and Landlord's garbage so the evidence is not conclusive that the Tenant has breached a term in the tenancy agreement.



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The Landlord has provide written statements which indicate that t he Tenant has made contact with people visiting the Landlord, and that he has made requests of the Landlord for the Landlord's son to turn his music down. These actions by the Tenant may have caused the Landlord some aggravation, but they are not severe enough to constitute a material breach in the tenancy agreement. I find that the Tenant has not materially breached the tenancy agreement with regards to the evidence that the Landlord has presented; consequently I find in favour of the Tenant and grant an Order to Cancel the 1 Month Notice to End Tenancy for a material breach of the tenancy agreement.

Conclusion

The section 47, 1 Month Notice to End Tenancy dated October 29, 2010 is hereby cancelled and this tenancy continues.

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*.

Dispute Resolution Officer