



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This was an application by the tenant to cancel a one month Notice to End Tenancy for cause and for a monetary order. The hearing was conducted by conference call. The tenant participated. The landlord participated and as assisted by Ms. D.L., a lawyer who acted as the landlord's translator, but not as her legal counsel.

Issues(s) to be Decided

Should the Notice to End Tenancy dated October 18, 2010 be cancelled?

Is the tenant entitled to a monetary order and if so in what amount?

Background and Evidence

The tenancy was the subject of a prior dispute resolution decision that was made on June 30, 2010 and confirmed after a review hearing. The tenant applied to cancel a Notice to End Tenancy and requested a monetary order and other relief. The Dispute Resolution Officer cancelled the Notice to End Tenancy and awarded the tenant the sum of \$125.00.

The landlord served the tenant with a second Notice to End Tenancy for cause on October 18, 2010. The Notice to End Tenancy alleged that the tenant has allowed an unreasonable number of occupants to live in the rental unit. The landlord claimed that the tenant has significantly interfered with or unreasonably disturbed another occupant

or the landlord, jeopardized the health or safety of the landlord and put the landlord's property at significant risk.

The landlord said that the tenants allowed an unreasonable number of occupants to live in the rental unit. She said that the tenancy agreement permitted there to be three occupants, but there have been four occupants up to July, 2010. The landlord acknowledged that there are now only three occupants and that there were only three occupants when she served the Notice to End Tenancy on October 18th.

The landlord said that a warning was given by the gas company when a technician attended at the rental unit. According to the landlord the warning was given because the tenant put flammable products, including paper and card board boxes in the furnace room. The tenant said that the technician from the gas company said nothing to him when he was here. He testified that he removed items from the furnace room at the landlord's request after receiving a notice on September 11, 2010. The landlord complained about the tenants use of a clothes dryer placed outside the rental unit. The landlord said that the tenancy should end because there was a lack of trust between the parties.

In addition to the cancellation of the Notice to End Tenancy the tenant requested payment of a monetary order in the amount of \$140.00. He said this was for the amount paid to the landlord for a temporary in May and June, 2010.

The landlord did not give the tenant copies of her evidence in support of this application; she did not provide him with the photographs or written submissions sent to the Residential Tenancy Office consequently i have not relied in this material in arriving at a decision.

The landlord alleged that there were an unreasonable number of occupant in the rental unit, but when the Notice to End Tenancy was given in October, 2010 there were only three occupants, being the number mentioned in the tenancy agreement. I find that

there is no merit to this ground for ending the tenancy. The landlord claimed that the tenant has put the landlord's property at risk interfered with or disturbed the landlord and jeopardized her health or safety; this was based on the claim that the tenant had stored unsafe items in the furnace room. The tenant denied that there was any warning from the gas company, but the items were removed after the September 11th notice from the landlord more than a month before the Notice to End Tenancy was given.

Analysis and Conclusion

I find that the Notice to End Tenancy given by the landlord should be cancelled. On the evidence presented there was not an unreasonable number of people in the rental unit when the Notice was given and I am not prepared to say that four people would be an unreasonable number in any event. The landlord's previous objection was not that there were too many occupants but rather that the tenant should pay additional rent to account for the increased utility bill.

The landlord claimed that a warning was given by the Terasen Gas technician who attended to re-light the furnace after the meter was changed. There are no pictures of the alleged fire hazard and there is no written notification from the gas company that there was a problem. The tenant said that he moved the offending items from the furnace room after notice from the landlord. The alleged cause did not therefore exist when the Notice to End Tenancy was given. I find that the landlord has failed to show on a balance of probabilities that there are sufficient grounds to justify ending the tenancy. I order that the Notice to End Tenancy dated October 18, 2010 be, and is hereby cancelled. The tenancy will continue.

I dismiss the tenant's claim for a monetary order. He asked for and obtained a monetary order in the previous dispute resolution proceeding. The claim now advanced was known to him at the time of the last proceeding and he could have, but did not include it as part of the previous claim. Further the landlord paid the tenant the sum of

\$175.00, presumably as compensation for the last award made to the tenant; this exceeded the award made to the tenant by the past decision.

The tenant is entitled to recover the \$50.00 filing fee paid for this application. He may deduct the sum of \$50.00 from the next instalment of rent paid to the landlord.

Dated: November 22, 2010.
