



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to apply to cancel a notice to end tenancy and to cancel a notice to end tenancy.

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

At the start of the hearing I determined the tenant filed her Application for Dispute Resolution within the legislated timeframes to dispute a notice to end tenancy for cause and as such there was no requirement to consider her application for more time to apply to cancel the notice. The tenant's Application was amended to exclude this matter.

During the hearing the landlord requested an order of possession should the tenant fail to be successful in her application.

Issue(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, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

In addition, it must be decided if the landlord is entitled to an order of possession for cause, pursuant to Section 55 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on February 15, 2010 for a 1 year fixed term tenancy beginning on March 1, 2010 for a monthly rent of \$975.00 due on the 1st of each month with a security deposit of \$490.00 paid. The tenancy agreement stipulates that there is no smoking of any combustible material permitted on the residential property, including within the rental unit;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on November 29, 2010 with an effective date of December 31, 2010 citing the tenant has allowed an unreasonable number of occupants in the unit and the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

- A copy of an email dated November 27, 2010 from an unidentified person stating they live in the residential property complaining that the cigarette smoke is entering their rental unit from under the sink in their kitchen and attributing the smoking to the tenant;
- A copy of a warning letter to the tenant dated October 29, 2010 from the landlord to the tenant regarding noise complaints stating excessive noise must stop immediately;
- A copy of a warning letter to the tenant dated October 29, 2010 from the landlord to the tenant regarding unauthorized people living in the rental unit stating it must be corrected immediately;
- A copy of a warning letter to the tenant dated November 5, 2010 from the landlord to the tenant regarding visitor parking; and
- A copy of a warning letter to the tenant dated November 16, 2010 from the landlord to the tenant regarding marijuana and smoking in the rental unit.

The landlord contends that he has received numerous complaints from other tenants in the building and in fact he has had two tenants move out as a result of the disturbances caused by this tenant. The landlord testified that he provided written warnings (as noted above) to the tenant on several occasions and the tenant has failed to correct the behaviours.

The tenant contends that she has never smoked marijuana or cigarettes in the rental unit. She does acknowledge that she had an area just outside the building where she smoked and put her cigarette butts. The tenant states she has quit smoking since New Years. The tenant also stated the landlord later found out it was a different person than this tenant smoking marijuana and they were evicted. The landlord denies this assertion.

The tenant also acknowledges that she had her nephew staying with her for an extended period of time and that she had informed the landlord of such but denies having anyone else living there.

The tenant testified that she had parked in the visitor parking only on 3 occasions and each was a result of either someone else parking in her spot without her knowledge or to help out another tenant's mother who needed to do some work on their vehicle.

The tenant acknowledges that because she has a 12 year old son; she has a dog that she takes out for walks on a regular basis and she cares for a 4 year old there may be many doors slamming and closing all the time.

The tenant testified that upon receipt of each of the letters she phone the landlord's office and left messages but there was no response. The landlord testified that after he

issued the two warning letters on October 29, 2010 the tenant and he did speak and that the tenant took no responsibility for any wrongdoing and that they ended by “agreeing to disagree”.

The tenant states that during that conversation they never did get into the issues raised in the landlord’s letters but rather she and the landlord got into a heated discussion regarding damage to a vehicle in the parking lot that had been caused by the tenant. The tenant contends the landlord is the one who got out of hand and starting yelling and swearing at her.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy if, among other things, a tenant has allowed an unreasonable number of occupants in the unit and the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

In an application submitted by the tenant to cancel the notice to end tenancy, the burden of proof first rests with the landlord to show that they have sufficient cause to end the tenancy.

On the matter of the landlord’s assertion that the tenant has allowed an unreasonable number of occupants in the unit, the landlord has provided no documentary evidence supporting the claim. In addition, the landlord has provided no evidence as to who the additional occupants may have been or when they had been living there. As a result, I find the landlord has failed to provide sufficient evidence of this cause that would warrant ending the tenancy.

I do not accept as reliable evidence the unidentified email of November 27, 2010; I do accept that the tenant acknowledges that she has smoked on the residential property, which is a breach of the tenancy agreement. However, the landlord has not cited a breach of the tenancy agreement as one of the causes to end the tenancy.

Despite the landlord’s warning letters and the tenant’s acknowledgement of receiving them, I find the landlord has failed to establish by way of documentary or testimonial evidence from complainants and/or former tenants that the disturbances occurred or were of sufficient magnitude to warrant ending the tenancy.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Conclusion

Based on the above, I grant the tenant's application and cancel the 1 Month Notice to End Tenancy for Cause issued on November 29, 2010 and find the tenancy in full force and effect.

However, I do note that the tenant should consider that she has been sufficiently warned by the landlord through this process of the landlord's intent to end a tenancy that is not compliant with the *Act*, regulations or tenancy agreement.

As I have found the tenancy to be in full force and effect, I dismiss the landlord's request for an order of possession.

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: January 05, 2011.

Dispute Resolution Officer