



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MT

Introduction

This hearing dealt with the tenants' 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 landlord and one of the tenants.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to submit an Application for Dispute Resolution to cancel a 1 Month Notice to End Tenancy for Cause and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 and 66 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on November 1, 2010 as a month to month tenancy for a monthly rent of \$700.00 due on the 1st of each month and a \$300.00 security deposit was paid.

The tenant submitted a copy of a 1 Month Notice to End Tenancy for Cause dated January 4, 2011 with an effective date of February 28, 2011 citing the tenant has allowed an unreasonable number of occupants in the unit; that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submitted a copy of an addendum to a tenancy agreement signed by the landlord and the tenants for crime free housing but has not submitted a full tenancy agreement. The landlord has also submitted two notices to the tenant indicating that the tenant has breached a material term and has failed to correct the breach within a reasonable time and a letter of complaint from tenants from the unit below with a complaint regarding the tenants walking behaviour in his rental unit.

The landlord testified that the reason for the notice based on unreasonable number of occupants is that the tenant has many people in his unit over night who all cause

disturbances throughout the night. The tenant testified that he may have had one person over from time to time but they are not loud.

The landlord testified that the tenant was involved in an incident that involved other tenants on the residential property that involved having the police on site but he was not clear on who was at fault, this tenant or the other tenants who have also been issued a Notice to End Tenancy.

The landlord testified that the material term that the tenant has breached relates to noise and that is specifically that no noise is allowed after 10:00 p.m. however, he also noted that he could not find a clause in the tenancy agreement that specifically speaks to this quiet time.

Analysis

Section 47 of the *Act* allows the landlord to end a tenancy by giving notice to end the tenancy if, among other things, there are an unreasonable number of occupants in a rental unit; the tenant has engaged in illegal activity that has or is likely to adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant; or the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time to do so.

Section 47 allows the tenant 10 days to file an Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. As per both parties' testimony that the notice was served in person to the tenant on January 4, 2011 and the fact the application was received by the Residential Tenancy Branch on January 11, 2011 I find the tenant has filed his application within the timelines required by the *Act* and I therefore dismiss their application for additional time.

Residential Tenancy Policy Guideline 13 defines an occupant as a person who is not a tenant who has moved into the premises and shares the rent. As the landlord provided no evidence or testimony that the tenants have allowed any additional persons to move in and share the rent, I find that landlord has failed to establish this as a cause to end the tenancy.

As to the landlord's claim that the tenant has engaged in illegal activity, I find the landlord has failed to provide sufficient evidence to substantiate whether the tenants were active participants or victims of any illegal activity. As such, I find the landlord has failed to provide sufficient evidence to establish this as a cause to end the tenancy.

Finally in relation to the landlord's assertion that the tenants have breached a material term of the tenancy, I find the landlord has failed to establish that a "quiet time" clause is either a term or a material term of the tenancy agreement, I therefore dismiss this as a cause sufficient to end this tenancy.

Conclusion

For the reasons noted above, I grant the tenants' Application to cancel the 1 Month Notice to End Tenancy for Cause dated January 4, 2011 and find the tenancy to remain in full force and effect.

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 25, 2011.

Residential Tenancy Branch