



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated December 22, 2010 and to recover the filing fee for this proceeding.

The Landlord said he served his evidence package on the Tenant on January 14, 2011 by leaving it on the driver's seat of the Tenant's car. The Tenant denied receiving the Landlord's hearing package. In the circumstances, I find that there is insufficient evidence to conclude that the Tenant was served with the Landlord's hearing package or that it was served in a manner required by s. 88 of the Act and as a result, it is excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

The rental unit is a cabin located on property where one of the Landlords also resides. The Landlords operate a Bed and Breakfast business out of their residence. There is also an apartment in the Landlords' residence that is rented out from time to time. The Tenant resided in the Landlords' residence for a period of time and moved into the rental unit and started paying rent of \$600.00 approximately 2 and ½ years ago. Water and cable are included in the Tenant's rent.

The Landlord said that on December 18, 2010, he discovered that a tap attached to the outside of the rental unit was left on full and that a hose was attached to it and was draining into some drainage tiles. The Landlord said he believed the Tenant had deliberately left the water running before going out of town the day prior. The Landlord said it was at this time that he discovered (from comparing the water usage for a similar period in the previous year) that there was an unusually high water usage which contributed an additional \$400.00 to his water bill. The Landlord said he tried to speak to the Tenant about it on December 19, 2010 when he returned but the Tenant refused to speak to him. The Landlord said he removed the hose on December 18, 2010 but the Tenant replaced it with another hose on the 22nd. The Landlord said he also

removed this hose but the Tenant replaced it with yet another hose on the 23rd which was also positioned to drain into the drainage tiles.

The Landlord said that as a result of this incident, he served the Tenant with the One Month Notice to End Tenancy for Cause on December 22, 2010 by posting it to the rental unit door. The Landlord said he then discovered on December 24, 2010 that the sewer pump panel had been vandalized and the Tenant had left town. The Landlord said out of frustration, he spoke to the Tenant's sister about these matters hoping she would speak to the Tenant. The Landlord said the Tenant returned on December 25, 2010 and apologized to him for leaving the water on and dismantling the sewer pump panel. The Landlord said the Tenant later replaced the vandalized parts to the sewer pump panel.

The Tenant denied that he left the water running on December 18, 2010 or that he vandalized the sewer pump panel. The Tenant also denied that he spoke to the Landlord on December 25, 2010 and made any admissions. Instead the Tenant claimed that someone else on the rental property could have left the water running or vandalized the pump. The Tenant also suggested that the Landlord was angry at him for not giving him any work and had done other things such as cut off his internet from time to time.

The Landlord claimed there were no guests or persons on the rental property since October 2010 and no other tenants after December 19, 2010. Consequently, the Landlord argued that the Tenant was responsible for these incidences which put the Landlord's property at significant risk and/or caused extraordinary damage to the rental unit or property. The Landlord said he also believed the Tenant was responsible for these incidences because the Tenant was angry with him over a job he believed the Landlord had ruined for him 2 months prior and he thought the Tenant was trying to seek revenge and inflict "monetary damage" on him.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The Landlord admitted that this appeared to be a matter of his word against the Tenant's. I also find that this is the case. In other words, in the absence of any corroborating evidence, I find that the Landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the One Month Notice to End Tenancy for Cause dated December 22, 2010 is cancelled and the tenancy will continue.

The Tenant also applied to recover the filing fee for this proceeding however I find that this is not an appropriate case to do so. In particular, notwithstanding the Landlord's

failure to provide sufficient evidence to prove the grounds set out on the One Month Notice, I find that the circumstances alone suggest that the Tenant likely had some involvement in the events that resulted in his being served with the Notice. Consequently, the Tenant's application to recover the filing fee for this proceeding is dismissed without leave to reapply.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated December 22, 2010 is granted and the tenancy will continue. The Tenant's application to recover the filing fee for this proceeding is dismissed without leave to reapply. 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 18, 2011.

Residential Tenancy Branch