



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution to cancel a One Month Notice to End Tenancy for Cause.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the One Month Notice to End Tenancy for Cause?

Background and Evidence

This tenancy started on May 1, 2007, originally as a fixed term tenancy, continuing now on a month to month basis. Monthly rent is \$520.00, payable on the 1st day of each month, and a security deposit in the amount of \$250.00 was paid on or about May 1, 2007.

The premises wherein the rental unit is also contained is a school facility on the first level, with three classrooms, and a washroom, laundry, waiting area and hallway shared with the Tenant. Additionally, the Tenant enters her rental unit by accessing the front door of the school. The Landlord lives on the second level.

Pursuant to the rules of procedure for the *Residential Tenancy Act* (the "Act"), the Landlord proceeded first in the hearing and testified as to why the Tenant had been served a One Month Notice to End Tenancy.

The Landlord issued a One Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on February 5, 2011, with a stated effective vacancy date of March 7, 2011.

The cause as stated on the Notice indicated that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord testified, and the Tenant agreed, that the Tenant was issued the Notice due to the Tenant entering a classroom on January 25, 2011, and removing a plug-in air freshener. The Landlord submitted that this entrance to a classroom not only violated her students' privacy, but violated a term in the tenancy agreement. The term referred to by the Landlord was an addendum which states as follows:

“Access to the classroom areas of the premises designated as the [*name omitted*] is prohibited unless there is a need to access the electrical panel in the first classroom.”

Upon query, the Landlord admitted there had been no written notice to correct issued to the Tenant regarding her alleged breach of a material term.

When queried, the Landlord testified that the set up of the Tenant's rental unit gives the Tenant unlimited access to the classrooms and any other rooms on the first level at any time of day or night.

Additionally I note, even though the students and the Tenant share washroom and laundry facilities, the Landlord stated that it was for only three hours a day and apparently created no concern on the Landlord's part concerning student confidentiality.

The Landlord acknowledged that the incident of the Tenant removing the air freshener was a onetime incident.

The Tenant testified that, at the time in question, she had no choice but to enter the classroom and remove the air freshener as she was having a severe allergic reaction and the Landlord did not respond to her calls or knocks on the door. The Tenant further stated that the Landlord knew she had the allergic reactions to air fresheners.

The Tenant stated that the instance of entering the classroom was an emergency and a onetime incident, of which she immediately notified the Landlord, and that the entire incident took only ten seconds.

The Tenant submitted that her access to the classroom has never been an issue in the past, as there have been multiple exceptions to the addendum term, such as exiting through a side door, moving in and out and attending to a breaker switch.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord submitted insufficient evidence and even acknowledged that the Tenant received no written notice to correct the alleged breach of a material term. Therefore, the Landlord has failed to prove her cause as listed on the Notice.

Additionally, even in the event I had found that the Landlord had properly issued a written Notice, I find that the term in the tenancy agreement referred to by the Landlord was not a material term. The Landlord presented no credible testimony to support this term being material, as the Tenant has had unlimited access to the classrooms for the past four years, without incident. Therefore I find the Landlord is estopped from raising this issue.

Based on these findings, I find that the 1 Month Notice to End Tenancy for Cause issued by the Landlord in this matter is not valid and I order it to be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

The Landlord's One Month Notice to end Tenancy for Cause issued February 5, 2011, is not valid and not supported by the evidence and the Tenant is granted an order dismissing the Notice to End Tenancy.

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: March 09, 2011.

Residential Tenancy Branch