

DECISION

Dispute Codes: CNC, DRI, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. The tenant also applied for a monetary order for the recovery of the filing fee and for a refund of the excess rent that he had paid due to a rent increase that was not in keeping with legislation. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to a monetary order?

Background and Evidence

The tenancy began on September 01, 2000. Current monthly rent is \$993, due on the first of each month. The rental unit is a room in an independent living facility for seniors and persons with disabilities. Rent includes meals, laundry and other services. The tenant is almost 99 years old and was represented at the hearing by his daughter.

The tenant stated that due to an illegal rent increase in 2009, over a period of one year, the tenant had paid \$25.00 in excess of what is permitted by legislation. The landlord agreed to refund this amount to the tenant.

On February 23, 2011, the landlord served the tenant with a notice to end tenancy for cause. The reason for the notice is that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord stated that the tenant is a habitual user of sleeping pills. Every room is equipped with a life line which occupants can use to get help in emergencies. The landlord stated that the tenant uses this life line for help with taking his sleeping pills and does so, on an average of 2-3 times a night. Upon triggering this call for help, staff members have to attend to the tenant to assess his emergency and take appropriate action. The landlord stated that the level of care that the tenant needs exceeds what the residence is legally permitted to provide. The landlord suggests that the tenant should move to a facility that is licensed as an assisted living facility.

The landlord did not file any evidence to support the reasons for wanting the tenancy to end.

The tenant's agent stated that she was not aware that her father used the life line several times at night. She stated that he did not have any health problems and had not had reason to visit a doctor for the past two years. She denied the allegation that her father significantly interfered with or disturbed other tenants or the landlord.

Analysis

In order to support the notice to end tenancy, the landlord must prove the grounds alleged. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord made allegations of careless use of the life line facility. The tenant denied the allegations and the landlord did not file any evidence to support her allegations. Therefore, I am unable to determine that the landlord has cause to end the tenancy.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated February 23, 2011. As a result, the tenancy shall continue in accordance with its original terms. Since the tenant has proven his case, he is entitled to the recovery of the filing fee of \$50.00. The landlord has agreed to refund the amount of \$25.00 to the tenant. The tenant may deduct a total of \$75.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant may make a onetime deduction of \$75.00 off rent for April 2011.

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 15, 2011.

Residential Tenancy Branch