



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNC, FF

Introduction

This hearing dealt with the Tenant's application to be allowed more time to file his application; to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice) and recovery of the filing fee. Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenant personally served the Landlord with the Notice of Hearing documents on April 21, 2011. It was also established that the Landlord provided the Tenant with copies of his documentary evidence on April 26, 2011.

Preliminary Matter

The Landlord testified that he served the Tenant with the Notice by leaving it in the mail slot at the rental property on March 30, 2011, with a witness present. The Tenant testified that the mail slot is in front of the Landlord's door. He stated that he does not receive mail at the rental unit and that his mail is delivered to his parents' residence. The Tenant stated that he did not receive the Notice until he got a text message from the Landlord on April 10, 2011, that there was an envelope for him at the rental unit.

Section 90 of the Act deems service of a document when placed in the person's mail slot to be affected 3 days after placing it in the mail slot. The Landlord acknowledged that there is no separate mail slot for the Tenant at the rental property. Therefore, I find there was no reasonable expectation that the Tenant would pick up the Notice from the mail slot. I find that the Tenant received the Notice on April 10, 2011. Section 47(4) of the Act provides that a tenant may dispute a Notice by making an application for dispute

resolution within 10 days after the date the Tenant receives the Notice. The Tenant filed his application on April 18, 2011, and therefore I find that the Tenant filed within the allowed time under Section 47(4) and his application to be allowed more time is not necessary. This portion of the Tenant's application is dismissed.

Issue to be Decided

Should the Notice issued March 30, 2011, be cancelled?

Background and Evidence

The rental unit is the basement suite of house. The Landlord lives on the main floor of the rental property.

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

Tenant has allowed an unreasonable number of occupants in the unit.

Tenant has engaged in **illegal** activity that has, or is likely to:

- Adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

Breach of a **material term** of the tenancy agreement that was not corrected within a reasonable time after **written notice** to do so.

The Landlord acknowledged that he had ticked the wrong box with respect to illegal activity and stated that he was not alleging that the Tenant had engaged in any illegal activity whatsoever.

The rental unit is a one bedroom, one bathroom suite of approximately 400 square feet. The Landlord testified that the Tenant's girlfriend is a regular visitor at the rental unit and that he knew she would be a regular visitor because the Tenant told him so at the beginning of the tenancy. He stated that another male friend of the Tenant's has been

living at the rental unit since December, 2011. The Landlord stated that three adults living in a 400 square foot, one bedroom suite is an unreasonable number of occupants.

The Tenant stated that he is the only person living at the rental unit. He stated that his girlfriend never stays overnight because her parents are very strict. He stated that his male friend is a close friend who stays on the couch some weekends, but has his own apartment and is not living at the rental unit.

The Landlord testified that there is a provision in the tenancy agreement that there are no dogs allowed in the rental unit. He stated that the Tenant, or his girlfriend, have a dog living in the rental unit and that the Tenant does not clean up after the dog's messes. The Landlord testified that he has sent the Tenant text messages asking the Tenant to pick up after the dog. He stated that a neighbour sees the Tenant walking the dog night and day.

The Tenant testified that the dog belongs to his girlfriend and that he babysits the dog for a couple of hours a day. He stated that the dog does not live at the rental unit. The Tenant testified that he told the Landlord that the dog would be visiting, but not staying over, and the Landlord said it would be alright. The Landlord denied this.

The Tenant testified that the Landlord told him he wanted the Tenant to move out of the rental unit because family would be moving in. The Landlord stated that there are no plans for relatives to move into the rental unit and he denied saying this.

Analysis

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

I find that the Landlord has not provided sufficient evidence that the Tenant's friend or the Tenant's girlfriend is living at the rental unit. A landlord may not stop a tenant from entertaining guests in the tenant's home.

To end a tenancy for breach of a material term, a landlord must establish that the tenant breached a material term and that the tenant did not rectify the breach within a reasonable time after written notice to do so by the landlord. The Landlord provided a copy of the tenancy agreement in evidence. It is a ½ page document. The clause pertaining to pets states: "No washer, dryer or dishwasher, No pets, No smoking and no drugs is allowed in the suite." (reproduced as written). A material term is a term that is so important that the most trivial breach gives the landlord the right to end the tenancy. Even so, the landlord must give the tenant written notice of the breach and a reasonable time to correct the breach. Text messages and e-mails are not normally considered to be written notification. In this case, the Landlord did not provide the Tenant with written notice of the breach or, therefore, reasonable time to correct the breach before issuing the Notice. Therefore, I find that the Landlord has not proven 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 Tenant was cautioned during the Hearing that there are no dogs allowed at the rental unit.

For the reasons stated above, I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in his application and is entitled to recover the filing fee from the Landlord. The Tenant may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

Conclusion

The Notice to End Tenancy issued March 30, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant may deduct \$50.00 from future rent due to the Landlord.

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: May 17, 2011.

Residential Tenancy Branch