



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a one month Notice to End Tenancy for cause, to allow the Tenant to reduce rent for facilities or services agreed upon but not provided, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and 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 one month Notice to End Tenancy for cause valid or should it be cancelled?

Has the Landlord not provided services or facilities agreed upon and not reduced rent?

Background and Evidence

On May 15, 2011, the Landlord served the Tenant with a one month Notice to End Tenancy for cause, with an effective date to end the tenancy of June 30, 2011 (the "Notice").

The Landlord has issued the Notice for the following alleged causes by the Tenant:

1. Repeated late payment of rent;
2. Seriously jeopardized the health or safety or unreasonably disturbed the Landlord;
3. Put the Landlord's property at significant risk; and
4. Breach of a material term of the tenancy agreement.

In regard to the first cause, the Landlord testified that the Tenant has been repeatedly late paying rent. He alleges the rent was paid late in the following months of 2011: January by two or three days, February by a few days, April late by four days, May by two days and June by not paying all rent that was due. The Landlord did not produce a ledger or receipt book indicating the dates the rent was late. There was no evidence he served her with 10 day Notices for Unpaid rent when it was late. He testified that often the Tenant provides a receipt for him to sign, but she takes the receipt away after he signs them.

In regard to the second and third causes, the Landlord alleges the Tenant has smoked inside the rental unit, or in close proximity to windows for the upper floor of the rental unit where the Landlord and his family live. He further alleges the Tenant has smoked pot and this smell has been carried into the upper portion of the house as well. In support of this, the Landlord has provided a letter from a student who lived with the Landlord from September 2010 to January 2011, who wrote the Tenant smoked marijuana outside the rental unit door during the dinner hour. The student also wrote she smelled cigarette smoke in the laundry room. The Landlord testified that in the past he suspended the Tenants laundry privileges because of the smell of smoke and also because she was doing laundry outside her designated times. He testified that her boyfriend has apparently moved into the rental unit with her and he has seen the boyfriend smoking as well.

In further regard to these causes, the Landlord testified that the Tenant has placed a bench seat from a van just outside the rental unit doorway, which only allows approximately one foot of clearance between the door and the bench seat. He states this is a hazard and contrary to a municipal bylaw, however, he produced no copy of the bylaw in evidence. The Landlord also testified that the Tenant disconnected a smoke alarm in the rental unit.

In regard to the breach of a material term of the tenancy agreement, the Landlord testified he did not use a written tenancy agreement with the Tenant.

In reply to the first cause the Tenant, testified he agreed she was late paying the rent in February of 2011. The Tenant agreed she did not pay all the rent for June, however, she testified she withheld a portion of the rent on the advice of the Branch because the Landlord had illegally increased her rent by \$50.00 per month. She denies being late with rent for January, April of May of 2011. She submitted in her written evidence that she had been late a few times, but in the hearing she testified that this year she had only been late twice and that the previous instances were all early last year (2010).

The Tenant denies smoking inside the rental unit. She further testified that she had unplugged the smoke alarm when she was making some pies because it was overly sensitive and would go off.

The Tenant testified that she has moved the bench seat away from the door of the rental unit.

The Tenant also testified that the Landlord is punishing her for these alleged breaches by not allowing her to do laundry.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Notice should be cancelled, and **I order the Notice cancelled and find it is of no force or effect.**

I am cancelling the Notice as I find the Landlord had insufficient evidence to support the causes listed in the Notice. The testimony and evidence provided do not provide sufficient proof that the tenancy should end as a result of this Notice. The tenancy will continue until ended in accordance with the Act.

For example, the Landlord had insufficient evidence to prove the Tenant was repeatedly late paying rent. Without receipts, ledgers, copies of 10 day Notices to End Tenancy to end tenancy for unpaid rent, or other records of when the rent payments were made, I find the Landlord had insufficient evidence to prove the Tenant was repeatedly late paying rent. Nevertheless, the Tenant is now aware the Landlord expects the rent payments to be made on the first day of each month and is cautioned even paying one day late will constitute a late payment of rent.

I find the Landlord has insufficient evidence of a breach of a material term of the tenancy agreement, as a written tenancy agreement does not exist. While the standard terms under the Act apply to every tenancy in the province, it does not deal with specific terms and conditions that apply to particular tenancies. For example, when the Landlord wishes to prohibit smoking in the rental unit it should be clearly written in an agreement. I do accept the Landlord does not want the Tenant to smoke inside the rental unit and this was explained to her at the outset of the tenancy.

Nonetheless, I order the Tenant, occupants or any guest of the Tenant, not to smoke inside of or within 13 meters (or 50 feet) of the rental unit building. The

Tenant is also cautioned that smoking marijuana or use of other illegal substances may warrant the Landlord contacting the local police to file a complaint.

There is only evidence of one instance where the Tenant disabled the smoke alarm, and this was temporary. **Nonetheless, the Tenant is ordered not to disable the smoke alarm in the rental unit.**

I accept that the Tenant has moved the van bench seat and therefore, this hazard has been removed. **Nonetheless, the Tenant is also ordered not to place the van bench seat or any other objects, such as a recycle bin within 2 meters of the exterior of the door to the rental unit.**

The Landlord is also ordered not to reduce or restrict the Tenant's use of the laundry facilities, as agreed upon at the outset of the tenancy, as one day per week.

Lastly, as the Tenant has been successful in cancelling the Notice, I order the recovery of the filing fee for the Application. **The Tenant may withhold \$50.00 from one rent payment.**

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: June 09, 2011.

Residential Tenancy Branch