



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. An Order allowing the tenant more time to make an application to cancel the Notice to end Tenancy – Section 66; and
3. An Order for the Landlord to comply with the Act - Section 62.

The Notice to End Tenancy for Cause (the “Notice”) with an effective date of August 31, 2011 lists the following cause:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Put the landlord's property at significant risk.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to more time to make the application?

Is the Notice valid?

Is the Landlord required to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began April 14, 2011. The Tenant is housed in a building run by an organization that provides safe and affordable housing to individuals with schizophrenia. The organization does not provide on-site management. On July 20, 2011, the fire department was called to the Tenant's unit after smoke was reported. The fire department report notes that smoke was in the room, the Tenant's smoke detector had been disconnected and that a kettle that had been left burning on the stove. Additionally, the fire report notes that drug paraphernalia known as "hot knives" was found on the stove and drugs were found on the table. Nothing in the report links the kettle, the paraphernalia or drugs to the smoke found in the unit. The Landlord states that she was told by the fire department that the smoke detector had been reconnected at the time of their attendance. The Landlord states that the Landlord probably did not return to check the unit or the replacement of the smoke detector following this incident and on July 24, 2011, the Landlord served the Tenant with the Notice. The Landlord states that on August 10, 2011, upon making an inspection of the Tenant's unit, the smoke detector was disconnected. The Landlord argues that both the presence of the drug paraphernalia and the disconnection of the smoke detector is sufficient casue to end the tenancy for the reasons stated on the Notice.

The Tenant states that his cousin had disconnect the smoke detector approximately two weeks prior and that although he knew that it was disconnected, did not report it to anyone. The Tenant states that the toaster had been left on with toast inside causing the smoke in the unit. The Tenant states that this was a once time occurrence and that knowing now of the importance of the smoke detector will not disconnect or allow the smoke detector to be disconnected. The Tenant states that the smoke detector was not reconnected by the fire department and was left disconnected until August 10, 2011 when the Landlord made the inspection on August 10, 2011. The Tenant states that the smoke detector was difficult to reconnect and the Landlord has a difficult time reconnecting the detector. The Tenant made no submissions in relation to the claim seeking the Landlord's compliance with the Act, regulation or tenancy agreement. The Tenant also made no submissions in relation to the late application.

Analysis

It is noted that the Tenant made the application two days past the time requirement to dispute the Notice. Although the Tenant made no submissions regarding the late application, I find that given the medical condition of the Tenant and the seriousness of the consequences to the Tenant should the Notice be found valid, it would be reasonable to provide the two extra days to the Tenant to make the application.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Although the Landlord argues that the presence of drugs justify the end to the tenancy, I find that the use of recreational drugs by the Tenant or others in the Tenant's unit does not in itself cause significant interference or unreasonable disturbance of other occupants nor does it place the Landlord's property at significant risk. Accordingly, I find that the Landlord has not substantiated this occurrence as valid cause for the Notice.

Although the Landlord states that the Landlord was informed by the fire department that the smoke detector was replaced by the fire department, there is nothing in the report that notes this occurrence, the Tenant disputes that the smoke detector was reconnected and the Landlord admits that it was unlikely that the Landlord checked to ensure the reconnection of the smoke detector until nearly a month later. As a result, I cannot find that the smoke detector was disconnected a second time by the Tenant. Further, given the non-action by the Landlord to ensure the reconnection of the unit, I cannot find that the original disconnection of the smoke detector is as significant as claimed by the Landlord. Considering this, and given my finding that the disconnection of the smoke detector was a one-time occurrence, I find that the Landlord has not met the burden of establishing sufficient cause to end the tenancy. I find therefore that the Notice is not valid and is of no effect. Accordingly, I cancel the Notice and the tenancy continues.

Conclusion

The Notice is cancelled and the tenancy continues.

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: September 12, 2011.

Residential Tenancy Branch