



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order to have the landlord make repairs.

The hearing was conducted via teleconference and was attended by the tenant, his advocate and the landlord's agent.

During the hearing, the tenant amended his application to deal only with the notice to end tenancy issues and withdrew his application seeking repairs at this time.

I note also, the landlord's agent did not request an order of possession should the tenant fail to be successful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 of the *Residential Tenancy Act* (Act).

Background and Evidence

The tenancy began in September 1991 and is currently a month to month tenancy for a monthly rent of \$783.00 due on the 1st of each month. A security deposit of \$263.00 was paid in or before September 1991.

The tenant provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on August 16, 2011 with an effective vacancy date of September 21, 2011 citing the tenant has caused extraordinary damage to the unit or property and that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written demand to do so.

The landlord's agent testified that the tenant has been letting pigeons into his rental unit and that as a result the tenant has breached his obligation under the tenancy agreement to keep the rental unit reasonably clean. A copy of the tenancy agreement was not provided as evidence.

In addition the landlord's agent asserts the tenant also has caused bedbug infestations by bringing foreign materials into the residential property and his rental unit and that as a result the property has received several treatments over the last couple of years.

The landlord's agent testified the tenant was provided a written warning on April 28, 2011 specifically regarding the pigeons and that on August 16, 2011 the agent himself saw a pigeon go into the tenant's rental unit. The agent testified the tenant's rental unit does not have a screen on the window.

Analysis

As the tenant has filed his Application requesting to cancel the 1 Month Notice to End Tenancy within the allowable timeframe, the landlord must provide sufficient evidence to establish the landlord has cause to end the tenancy.

Section 47 of the *Act* stipulates that a landlord may end a tenancy by giving the tenant a notice to end it if the tenant has caused extraordinary damage to a rental unit or residential property or if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Despite the landlord's claim that actions by the tenant have caused extraordinary damage and while both parties agree the landlord has treated the rental unit for bedbugs several times in recent years, I find the landlord has failed to establish that the tenant's actions have caused any damage to the rental unit or residential property.

In addition, in absence of a copy of the tenancy agreement, if the landlord's assertion is that the tenant has failed to maintain his obligations under Section 32, that he must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access, I find the landlord has failed to provide any evidence to establish such a failure.

In addition, if the landlord's position is that by letting pigeons into the rental unit the tenant has caused damage to the rental unit, the landlord has failed to provide evidence that the tenant was the cause of having pigeons enter the rental unit. For example, it

may be simply that because the window does not have screening pigeons will enter when the tenant has the window open.

Conclusion

For the reasons noted above, I find the landlord has failed to establish there is cause to end this tenancy as noted in the 1 Month Notice to End Tenancy for Cause issued by the landlord on August 16, 2011 and I find the tenancy remains in full force and effect.

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 27, 2011.

Residential Tenancy Branch