



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

During the hearing the landlord did not verbally request an order of possession, should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

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

Background and Evidence

The parties agree the tenancy began in October 2010 as 6 month fixed term tenancy that converted to a month to month tenancy on April 1, 2011 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid in September 2010.

The tenant submitted a copy of a 1 Month Notice to End Tenancy for Cause dated September 3, 2011 with an effective vacancy date of November 1, 2011 citing the tenant has allowed an unreasonable number of occupants in the unit.

The landlord testified the tenant informed him when looking to rent the unit that she had 2 children and it wasn't until November 2010 that the landlord found out that the tenant had 4 children with her. As a result, the landlord asserts the hydro and gas utilities are substantially higher than if the unit was rented to an adult and 2 children.

The landlord testified that he spoke with the tenant at the time and they agreed to leave it until the end of the fixed term. At the end of the fixed term the landlord states he approached the tenant who indicated that she could move at that time and that she would at the end of June 2011. Nothing was obtained in writing.

In July 2011 the landlord received his annual adjustment billing from hydro and discovered the cost of hydro was extremely high and he felt this was related to the number of occupants so he issued the notice to end tenancy.

The tenant asserts that she never had any discussions with the landlord about the number of occupants until July when he wanted to implement a \$50.00 per month rent increase and she would not agree to the increase.

Analysis

In an Application for Dispute Resolution to cancel a 1 Month Notice to End Tenancy for Cause the burden is on the landlord to provide sufficient evidence to establish the landlord has cause to end the tenancy.

One of the conditions to be met by a landlord in trying to end a tenancy for cause is that the landlord has provided adequate warning to the tenant that the cause identified by the landlord is putting the tenancy in jeopardy.

In the face of disputed testimony between the parties and in the absence of any written documentation to support the landlord's testimony that he had several discussions with the tenant about ending the tenancy because there are too many occupants, I find the landlord has failed to provide the tenant with sufficient warning in relation to ending the tenancy.

I also find that in the face of disputed testimony and in the absence of any written documentation to support the tenant's testimony, the tenant has failed to establish the landlord is attempting to end the tenancy because of her refusal to pay additional rent due hydro charges.

Conclusion

Based on the above, I grant the tenant's Application to cancel the 1 Month Notice to End Tenancy for Cause issued on September 3, 2011 and I find the tenancy in full force and effect.

However, I note that as a result of the issuance of the notice, the tenant should consider herself sufficiently warned that the landlord may still determine the number of occupants in the rental unit to be unreasonable and may result in the landlord having cause to issue a notice to end the tenancy.

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: October 04, 2011.

Residential Tenancy Branch