



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

On December 7, 2011, a letter was issued to the parties, declining the landlord's request for a summons.

On December 9, 2011, the landlord resubmitted a second request for a summons and provided some additional information explaining the reasons for the summons request. At the start of the hearing I heard the landlord's submission; that he believes the tenant is being dishonest and that access to her employment records would reveal she was working at the time she submits she was at home and allegedly heard a conversation between the landlord and the upstairs occupant.

I determined that the reasons stated in my December 7, 2011 letter continued to apply; particularly Residential Tenancy Branch Policy, which provides:

*The information sought from the summons must be relevant to the proceedings.
A summons cannot be used to go on a fishing expedition for information without any clear relevance to the issue at hand.*

The landlord suspects the tenant is not telling the truth, but has no evidence of this and is searching for evidence. The parties were at liberty to ask questions of the other; I explained that I would make a determination based on the balance of probabilities and the evidence before me; rather than issuing a summons to the tenant's employer.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause issued on November 20, 2011, be set aside?

Is the tenant entitled to filing fee costs?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2011.

The reasons stated for the Notice to End Tenancy were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; put the landlord's property at significant risk; that the tenant has engaged in illegal activity that has, or is likely to damage the property, affect the quiet enjoyment, security, safety or physical well-being of the landlord and jeopardize a lawful right or interest of another occupant or the landlord.

The landlord provided a copy of the tenancy agreement; the tenancy commenced on April 1, 2011, rent is due on the first day of each month. The tenant rents a lower unit, other occupants reside in the upper unit. The tenancy agreement requires the tenant to pay the water utility. The agreement includes a clause prohibiting smoking on the property.

The landlord stated that the water bill was to remain in the landlord's name, but the upper occupant, without the landlord's knowledge, changed the bill to her name. The landlord has been providing notices to the tenant and occupant in relation to the water bill; portions of which the landlord has paid, in order to avoid costs being placed on the property taxes.

The landlord stated that on November 7, 2011, they spoke over the telephone with one of the occupants in the upper unit, who uttered threats that she would cause harm to the landlord's property. The tenant has signed a statement, a copy of which was supplied as evidence; which indicates the tenant overheard the telephone conversation between the occupant and landlord on November 7, 2011; and that she did not hear any threats.

The landlord attended a previous hearing in an attempt to end the occupant's tenancy early; that application failed. The landlord submitted that the application failed, in part, as the result of the tenant's fraudulent statement, asserting she did not hear any threats made on November 7, 2011. The landlord believes that the tenant was at work at the time of the telephone call; 7 p.m. The tenant testified that she worked from 5 a.m. to

1 p.m. on November 7, 2011; that she was home when the occupant came downstairs with the telephone and that she heard part of the conversation.

The landlord believes that the tenant's fraudulent statement has contributed to placing the property at risk of harm or damage by the occupant and, as a result, the tenancy should end for the reasons indicated on the Notice issued November 20, 2011.

The landlord stated that the tenant has breached the no smoking term of the tenancy agreement. Photographs of cigarette butts outside of the tenant's door were supplied as evidence. The landlord stated that they have given the tenant many warnings in relation to smoking and that a written warning was given on November, 20, 2011, the same day the Notice ending tenancy was delivered to the tenant. The tenant testified that the occupants upstairs do smoke, that the tenant is non-smoker and that her friends do not smoke on the property.

The landlord requested a monetary order for unpaid water bills. The tenant testified that she is responsible for 30% of the water bill costs. The landlord stated that the tenancy agreements require the tenant and the occupants upstairs to pay 100% of the water costs and that he leaves it up to them to reach agreement on how the bill should be shared. The tenancy agreement does not include an addendum or any explanation of water bill cost-sharing.

The landlord declined to accept an offer by the tenant to vacate the rental unit in February, 2012.

Analysis

The tenant has applied to cancel a Notice ending tenancy for cause issued on November 20, 2011; the effective date of the Notice is December 31, 2011. In a case where a tenant has applied to cancel a Notice ending tenancy for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions and photographs submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- put the landlord's property at significant risk;
- that the tenant has engaged in illegal activity that has or is likely to: damage the property, affect the quiet enjoyment, security, safety or physical well-being of the

landlord and jeopardize a lawful right or interest of another occupant or the landlord.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

"To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others."

I find that a significant disturbance would be one which was substantial or serious in nature and, that serious jeopardy must reflect a situation, as defined by ***Black's Law Dictionary***, that includes a "danger; hazard; peril." In order to find that the tenant has engaged in activity that has placed the landlord's property at significant risk, I must find that the damage is substantial, serious and posed harm, danger or loss.

In relation to the November 7, 2011, telephone call between the occupant and landlord, I find that the tenant may well have heard part of the conversation; there is no evidence before me that the tenant heard the whole conversation, as she testified the occupant came downstairs and was already talking with the landlord. There was no evidence before me that the tenant has been dishonest or that she was away from the home during the telephone call; she has provided affirmed testimony that she was not at work at the time the call occurred on the evening of November 7, 2011, and that she was at home.

Even if the tenant had lied, I would find this could not form adequate cause, as required by the Act, to end the tenancy for the reasons provided on the Notice issued November 20, 2011.

There was no evidence before me as to who has left cigarette butts on the carpet outside and I find that the landlord has failed to prove the tenant or her guests have smoked on the property. The tenant stated the occupants in the upper unit smoke; therefore in the absence of evidence that the tenant or her guests have smoked on the property, the Notice is not supported. The landlord has never seen the tenant or her guests smoke on the property.

The tenant stated she has accepted responsibility for 30% of the water bill costs. I have not considered payments made, who has made the payments nor have I reached any other finding in relation to water bills owed. The landlord has testified he expects the tenant and occupants of the upper unit to reach agreement as to how the bills should be divided. The landlord stated the each of the tenancy agreements require 100% payment of the water bill. The landlord is at liberty to submit an application requesting a monetary order.

As the application has merit I find that the tenant may deduct the \$50.00 filing fee costs from the next month's rent due.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated November 20, 2011, and I Order that this tenancy continue until it is ended in accordance with the Act.

The tenant is entitled to deduct the \$50.00 filing fee from the next month's rent due.

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: December 20, 2011.

Residential Tenancy Branch