



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated November , 2011 effective December 31, 2011. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had breached a material term of the tenancy that was not corrected within a reasonable amount of time after written notice to do so.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issues to be determined is whether the notice should be cancelled.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence

The tenancy began on September 1, 2001 and current rent is \$685.00. A security deposit of \$287.50 was paid.

The landlord testified that there was a material term in the tenancy agreement stating that the tenant could not do mechanical car repairs in the parking lot. A copy of this portion of a tenancy agreement was submitted into evidence. The landlord testified that the tenant had breached this term and continued despite verbal warnings so a One Month Notice to End Tenancy for Cause was served on the tenant.

The tenant testified that their tenancy agreement did not contain this clause. The tenant testified that the landlord is required to give the tenants warnings in writing before issuing a One Month Notice to End Tenancy for Cause based on an alleged violation of the agreement.

In any case, the tenant agreed not to do repairs without written permission from the landlord in future. The tenant stated that they complied with the landlord's request to cease this activity.

Both parties agreed that the Notice will not be enforced given the circumstances. However, the tenant is still seeking reimbursement of the \$50.00 cost of filing the application.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable and also that the terms agreed to in a tenancy agreement are enforceable through dispute resolution. Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to disputes over ; (a) rights, obligations and prohibitions under this Act; and (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

In order to end a tenancy under section 47 for cause a landlord would need to prove that the tenant was in violation of either the Act or a material term in the tenancy agreement.

I find that the landlord had entered into a written tenancy agreement, but that this agreement did not contain a term prohibiting the tenant from doing car repairs in the parking lot or other common area. Therefore, I find that there was no breach of any term in the tenancy agreement and no basis to support a One Month Notice to End Tenancy for Cause.

Even if such a term existed in the agreement and it was also found to qualify as a material term, I find that the tenant did correct their conduct within a reasonable time and the landlord's concerns have been resolved satisfactorily.

That being said, I caution the tenant that conducting automotive work in a common area, such as a parking lot would not likely be permitted under the Act.

Firstly, this activity may be considered as compromising other tenant's rights under section 28 of the Act which protects a tenant's right to quiet enjoyment. Section 28 states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;

- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Secondly, I find that section 32 of the Act contains provisions stating that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. I find that engaging in car repairs may be seen as violating the tenant's obligation under this section.

Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause dated November 27, 2011, will not function to validly end this tenancy. I find that the tenant's application requesting that the Notice be cancelled must be granted for the reasons stated above.

Conclusion

I hereby order that the landlord's One-Month Notice to End Tenancy for Cause dated November 27, 2011 be permanently cancelled and of no force nor effect. As the tenant has been successful in their application, I find that the tenant is entitled to be reimbursed the \$50.00 paid for this application and hereby order that the tenant may reduce their next rent payment by this amount as a one-time abatement.

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 13, 2011.

Residential Tenancy Branch