



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for cause, an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began May 1, 2009 with monthly rent of \$900.00 and the tenants paid a security deposit of \$450.00.

On November 30, 2011 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause:

The tenants have:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- jeopardized a lawful right or interest of another occupant or the landlord.
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;.

The landlord stated that the tenants brought a cat on to the property and the tenancy agreement states no pets. On November 30, 2011 the landlord gave the tenant a written warning notice that the cat had to be removed from the rental unit or the tenant would be in breach of the rental agreement. On that same day the landlord gave the tenants the 1 month notice to end tenancy for cause due the presence of the cat on the property and one of the tenants smoking marijuana on the property.

The landlord's witness testified that they observed the cat on the property on November 30, 2011 and that the tenant's daughter had a photo of the cat on her Facebook page. The landlord and witness both stated that they had not observed the cat at the rental unit since November 30, 2011.

The tenant stated that there had been a cat on the property on November 30, 2011 and that it belonged to her brother. The tenant maintained that she was only looking after the cat and the cat was taken back to her brother's on November 30, 2011 after she was advised by the landlord that it could not remain in the rental unit.

The landlord stated that on December 12, 2011 the tenants were provided with a demand letter as the utilities in the amount of \$154.47 were unpaid and this letter also warned the tenants to stop smoking marijuana in the rental unit. The landlord stated that a strong odour of marijuana was present when she was at the rental unit on December 12, 2011 however the tenant denied that anyone was smoking marijuana in the rental unit on that day. The landlord stated that they continue to have difficulty renting the lower unit in the house due to the tenants smoking marijuana.

The tenant stated that the second tenant named in this application is a friend and does not reside with the tenant. The tenant stated that it is her friend who occasionally smokes marijuana at the rental unit but that this has stopped since the tenant received the December 12, 2011 warning letter.

The tenant stated that she had attempted to pay the January 2012 rent but that the landlord had refused it. The tenant stated that she would also have the money for the utilities on January 6, 2012.

The tenant stated that she believed the problem with renting the lower unit was due to how easily sound travelled between the 2 rental units. The tenant stated that most of the floors in her unit are wood floors and that if the floors were carpeted it would help to buffer the noise for the downstairs unit. The tenant stated that if she didn't have a tv or radio on she would be able to easily hear the tenants in the lower rental unit.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds to have the notice to end tenancy for cause upheld and are entitled to an order of possession.

The landlord gave the tenant both a warning notice and notice to end tenancy on November 30, 2011 and the tenant corrected the issue of having a cat on the property that same day; the landlord at this time had no evidence that the cat remains on the

property. And while the tenant may have been in breach of the tenancy agreement on November 30, 2011, a tenant must be allowed time to correct the breach before the landlord moves to evict the tenant.

The tenant also maintains that her friend no longer smokes marijuana in the rental unit and the tenant needs to ensure that consumption of marijuana not only does not occur in the rental unit but also does not occur on the landlord's property.

The tenant understands that if presence of a cat or smoking marijuana on the property is verified by the landlord in the future, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

The landlord has not issued the tenant a 10 day notice for unpaid rent or utilities and is not entitled to an order of possession on those grounds. As the tenant stated in the hearing that the utilities would be paid in full on January 6, 2011 the landlord will not be issued a monetary order.

The landlord's November 30, 2011 notice to end tenancy for cause is hereby set aside and the tenancy continues in full force and effect.

The landlord's application is dismissed without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's Notice to End Tenancy for Cause dated November 30, 2011 is set aside with the result that the tenancy continues uninterrupted.

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: January 5, 2012

Residential Tenancy Branch