



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. The tenant and both landlords participated in the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue - Jurisdiction

In the hearing, the landlord argued that I did not have jurisdiction to hear this matter, as the tenant only rents a bedroom in the owner's house. The tenant and the owner do not share a kitchen, but the owner could gain access to the tenant's bathroom at any time. The owner has simply agreed not to access the tenant's bathroom out of courtesy. Further, the tenant does not actually reside in the rental space, as shown by the alternate mailing address that the tenant provided on his application for dispute resolution. The landlord stated during the hearing that the house has five bathrooms.

The tenant's response was that his bathroom is an ensuite bathroom contained within his suite, and is only accessible by him. The rental unit is completely separate, locked, and not accessible by the landlord. The tenant has never shared his bathroom with the owner. Further, the landlord has used the standard residential tenancy forms for the tenancy agreement and the notice to end tenancy, which demonstrates the landlord's intention to have the tenancy fall under jurisdiction of the *Residential Tenancy Act*.

I find that this tenancy does fall under the jurisdiction of the Act. I accept the evidence of the tenant as more credible and likely than that of the landlord on this issue. The tenant's bathroom is an ensuite bathroom, contained within the rental space, and the landlord cannot access that bathroom except by entering the tenant's rental unit. The owner has never used the tenant's bathroom, and there are several bathrooms in the house. The landlord has served the tenant a notice to end tenancy for cause, and

clearly the landlord wishes to employ remedies only enforceable under the *Residential Tenancy Act*.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on February 1, 2011. Rent in the amount of \$795 is payable in advance on the first day of each month.

On December 28, 2011 the landlord served the tenant with a notice to end tenancy for cause. The notice indicates that the reason for ending the tenancy is that the tenant is repeatedly late paying rent. The landlord also hand-wrote on the notice as follows: "using the landlord's phone line." I informed the parties in the hearing that the issue of using the landlord's phone line was not a prescribed reason under the Act for ending the tenancy, and I therefore would only consider evidence regarding repeated late payment of rent.

Landlord's Evidence

The tenant has paid his rent late every month except January 2012, and one or two other months since the outset of the tenancy. The tenant backdates his rent cheques to the first of the month, so the landlord cannot provide supporting evidence that the rent is paid late.

Tenant's Evidence

The tenant has never been late with his rent. The landlord served a one-month notice to end tenancy when they ought to have served a two-month notice to end tenancy for landlord's use; however, the landlord does not want to pay the tenant the compensation that he would be entitled to pursuant to a two-month notice.

Analysis

I find that the notice to end tenancy is not valid. The landlord has not provided sufficient evidence to establish that the tenant was repeatedly late paying rent.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

As the tenant was successful in his application, he is entitled to recovery of the \$50 filing fee for the cost of his application. The tenant may deduct \$50 from his next month's rent.

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 24, 2012.

Residential Tenancy Branch