



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 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 female tenant and two agents for the landlord.

During the hearing, the landlord did not verbally requested 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 a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant has submitted a copy of a tenancy agreement signed by the parties on April 22, 2008 for a 1 year fixed term tenancy beginning on May 1, 2008 that converted to a month to month tenancy on May 1, 2009 for a current monthly rent of \$1,393.00 due on the 1st of each month with a security deposit of \$660.00 paid.

The landlord provided a copy of a 1 Month Notice to End Tenancy for Cause issued on January 30, 2012 with an effective vacancy date of February 28, 2012 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk.

The landlord's agent testified that on the night of January 29, 2011 he received a call from a neighbouring tenant because the male tenant from the dispute address had broken in to the building and his unit. The landlord investigated and found the tenant had severely damaged the building and unit doors, the walls in the unit, and the blinds.

The female tenant testified that she had been sleeping when the male tenant entered the unit and caused all the damage. The tenant has submitted court documents confirming that she was a victim of the male tenant's violent behaviour on that night and that the male tenant is not allowed contact with her or to return to the building.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk.

Residential Tenancy Policy Guideline 13 states that co-tenants are two or more tenants who rent the same property under the same tenancy agreement and that co-tenants are jointly responsible for all of the terms of the tenancy agreement. As such, despite the female tenant being victimized by the male tenant's behaviour the landlord may end the tenancy for both tenants based on the behaviour of one tenant.

As the parties do not dispute the events of January 29, 2011, I find the significance of the disturbances and the damages caused by the male tenant to the residential property are sufficiently significant to warrant ending the tenancy.

Section 47(2) states the effective date of a notice under Section 47 must not be earlier than one month after the date the notice is received and is the day before the day in the month that rent is due under the tenancy agreement.

The notice issued by the landlord lists February 28, 2012 as the effective date, as 2012 is a leap year February has 29 days and as rent is due, according to the tenancy agreement, on March 1, 2012, the correct effective date is February 29, 2012.

Section 53 of the *Act* states that if a landlord gives a notice to end a tenancy effective on a date that does not comply with the applicable section that the notice is issued under the notice is deemed to be changed to the earliest effective date under the applicable section. As such, I amend the effective date to February 29, 2012.

Conclusion

For the reasons noted above, I find the 1 Month Notice to End Tenancy issued by the landlord on January 30, 2012 to be effective and that the tenancy will end effective February 29, 2012.

I dismiss the tenant's Application in its entirety.

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: February 17, 2012.

Residential Tenancy Branch