



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy; and to recover the filing fee for this Application.

The hearing was conducted via teleconference and was attended by both parties.

At the outset of the hearing I clarified with the parties that the tenant received a 1 Month Notice to End Tenancy for Cause on February 23, 2012. A tenant may apply to dispute such a notice within 10 days of receiving the notice. I note the tenant submitted her Application for Dispute Resolution on February 27, 2012, as such there is no need for the tenant to have additional time. I amend the tenant's Application to exclude her request for additional time.

Further the tenant testified that she had obtained a fee waiver for the Application and as such no longer seeks to recover the filing fee, I therefore further amend the tenant's Application to exclude recovery of the filing fee.

During the hearing, the landlord did not verbally requested an order of possession should the tenant be unsuccessful in her Application.

Also during the hearing, the landlord confirmed that he had not served the tenant with any of his evidence. I advised both parties that as a result, I would not consider any of the landlord's documentary evidence.

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, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on January 1, 2012 as a month to month tenancy with a monthly rent of \$950.00 due on the 1st of each month with a security deposit of \$400.00 paid.

Both parties have submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on February 23, 2012 with an effective vacancy date of March

31, 2012 citing the tenant has allowed an unreasonable number of occupants in the unit; 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; put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; jeopardize a lawful right or interest of another occupant or the landlord; and the rental unit must be vacated to comply with a government order.

In the hearing the landlord acknowledged that he had incorrectly checked all of the cause to end the tenancy on the Notice except for the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the rental unit must be vacated to comply with a government order.

The tenant lives in the upper part of a house and the landlord has different tenants living in a rental unit in the basement. The landlord testified that he has received an order from the city that he must remove the rental unit from the basement as it does not comply with local bylaws for rental units. The landlord did not provide a copy of the order into evidence. As a result the landlord wants to turn the residential property into a 4 bedroom house to be rented as a single rental.

In relation to the landlord's claim the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord the landlord puts forward three particular causes:

1. The tenant has smoked in the residential property (laundry area) contrary to the tenancy agreement as evidenced by finding an ash on a window ledge and a pop can containing cigarette butts in the room;
2. The tenant has visitors coming and going at all hours who are disturbing the tenants in the basement unit and neighbours when they do this; and
3. The tenant held a party on a Sunday night in February after the bars closed down which disturbed the tenants in the basement unit and neighbours.

The tenant acknowledges that she smokes but that she only keeps the cigarette butts in the laundry room because her son doesn't go in there and she doesn't want her son or his friends to see them or get into them.

The tenant submits her visitors include mostly her family but that even if they come over in the evening they are quiet because her 5 year old son goes to bed at 7:00 p.m. The tenant agrees that on February 19, 2012 (Sunday) she did have friends visiting from out of town staying with her and they came home after the bar closed but that when the police were called in all of her guests went and stayed at the hotel behind the rental unit.

Analysis

As the landlord acknowledged that there were several items on the Notice that did not pertain to causes to end this tenancy I advised both parties that the landlord could not rely on the issues to end the tenancy and as such I heard no testimony from either party on matters related to:

- a) There are an unreasonable number of occupants in a rental unit;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - ii. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

In relation to the landlord's submission that he must end the tenancy to comply with a government order, I find the order, as described by the landlord in his testimony, deals with the landlord's requirement to remove the unit from the basement which has no impact on the tenancy for this tenant as she does not live in the basement unit.

In relation to the landlord's assertion that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord I make the following findings:

1. The landlord has failed to provide sufficient evidence that the tenant was smoking inside the rental unit despite finding cigarette butts in a pop can. In the absence of any evidence or eye-witness testimony to confirm the tenant was smoking in the room, I find it is possible that merely kept the pop can with the cigarette butts out of the reach of her son;
2. I find the landlord failed to provide any specific details as to when visitors were coming; how often; what time of the day/night; and how they were causing disturbances to the other occupants. Further, I find reason, under the *Act*, that a tenant can be limited in the number of guests she has; and
3. While I accept the tenant did have a party after the bars closed, I find that occurrence of one party is not sufficient to end a tenancy, as the tenant has not been provide an opportunity to change her behaviour.

Conclusion

For the reasons noted above, I order the tenant may cancel the 1 Month Notice to End Tenancy for Cause issued on February 23, 2012 and I find the tenancy remains in full force and effect, until such time as the tenancy may end in accordance with the *Act*.

While I have found that having one party was not sufficient cause to end the tenancy, I note the tenant should consider herself sufficiently warned of the impact of having a late night party on the other occupants in the residential property and of the landlord's intention to end the tenancy should it happen again.

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: March 16, 2012.

Residential Tenancy Branch