



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing dealt with the Tenant's application cancel a *10 Day Notice to End Tenancy for Cause* (the Notice) issued February 28, 2012.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Landlord received the Notice of Hearing documents on March 6, 2012.

It was also established that the Tenant was served with the Notice to End Tenancy on February 29, 2012.

Issue to be Decided

Should the Notice issued February 28, 2012, be cancelled?

Background and Evidence

The parties were in agreement to the following facts:

- This is a month-to-month verbal tenancy agreement.
- Monthly rent is \$700.00 per month, due on the third Wednesday of each month.
- The rental unit is a bachelor suite with no bedroom.
- The Tenant paid a security deposit in the amount of \$350.00 at the beginning of the tenancy.
- Neither party is certain when the tenancy began, but believe it was nearly a year ago.
- There is no agreement with respect to whether or not the Tenant can smoke inside her residence.

The Landlord gave the following testimony:

The Landlord testified that he believes the Tenant is smoking drugs and cigarettes inside the rental unit. He stated that he went to speak to her about it and her roommate answered the door. The Landlord stated that he didn't give the Tenant permission to have a roommate. He stated that the rental unit is too small for more than one person to live there.

The Landlord testified that he told the Tenant that no other occupants were allowed, but that there are now two unauthorized people living in the suite. The Landlord testified that the unauthorized occupants get mail delivered to the rental unit. The Landlord testified that the Tenant and her roommates and guests are noisy and that they disturb the other occupants in the building.

The Landlord's Witness gave the following testimony:

The witness testified that he and his wife moved into a suite in the rental property in November, 2011. He stated that the Tenant smokes inside the rental unit, which travels through the vents and into his home. He submitted that her smoking is affecting his health and the health of his wife. The witness testified that he has spoken to her about how the smoke is bothering him, but she will not stop smoking in the rental unit.

The witness testified that there is "a lot of activity" at the rental unit and it is noisy until midnight which disturbs him and his wife. He stated that he has talked to the Landlord and to the Tenant about the noise, but it hasn't helped.

The witness testified that he thinks there are drug deals happening at the rental unit because a young man comes by a lot and stays for only a minute and then leaves with his hand in his pocket as though he is concealing something.

The witness testified that three times "someone" has stolen his empty bottles that he stacks outside. The witness stated that he has not seen who is doing it.

The witness stated that he moved from a noisier place and that the Tenant's smoking is the main problem.

The Tenant gave the following testimony:

The Tenant testified that she sometimes has visitors and an over-night guest, but that no one else is living at the rental unit. She stated that no one has ever spoken to her about noise, but that she is aware that her smoking is bothering the other occupants in

the rental property. The Tenant stated that she is trying to quit smoking and agreed not to smoke inside the rental unit anymore.

Analysis

The onus is on the Landlord to prove, on the balance of probabilities, that the tenancy should end for the reasons noted on the Notice. The Notice indicates three reasons for ending the tenancy:

1. The Tenant has assigned or sublet the rental unit without the Landlord's written consent.
2. The Tenant has allowed an unreasonable number of occupants in the rental unit.
3. The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord did not provide any evidence that the Tenant has assigned or sublet the rental unit. The Tenant is still living in the rental unit. Therefore this reason to end the tenancy is not proven.

I find that the Landlord has not provided sufficient evidence that there are a reasonable number of occupants in the rental unit. As explained to the parties, the Tenant is entitled to have guests in her own home, but must ensure that they do not disturb other occupants or the Landlord. I find that the Landlord did not provide sufficient evidence to end the tenancy for this reason.

The Landlord did not provide sufficient evidence with respect to the third reason to end the tenancy. He did not provide evidence that he had warned the Tenant about noise (for example written warning), and I find that the witness's testimony was very vague with respect to noise violations. There were no dates provided, and the witness indicated that he has lived in noisier situations. The witness stated that his main concern was the fact that the Tenant's second hand smoke was affecting his health.

I find that there is insufficient evidence that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord by being noisy. There was no agreement between the parties that the Tenant would not be allowed to smoke in the rental unit when her tenancy began. However, the Tenant has agreed not to smoke inside the rental unit from now on because she recognizes that it is bothering the other occupants of the building.

I find that the Landlord has not provided sufficient reasons to end the tenancy and therefore, I find that the Notice is not a valid notice.

I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Notice to End Tenancy issued February 28, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has indicated her agreement not to smoke inside the rental unit. Therefore, I find that this is an enforceable term of the tenancy agreement from now on.

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 26, 2012.

Residential Tenancy Branch