



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC and FF

Introduction

This hearing was convened on the tenant's application to have set aside a Notice to End Tenancy for cause, dated April 1, 2012 and setting an end of tenancy date of April 30, 2012. The tenant also sought a monetary award for restricted use of laundry facilities and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the tenant is entitled to monetary consideration for restricted use of the laundry facilities.

Background and Evidence

The landlords believed this tenancy began on June 1, 2009 on the basis of the rental agreement before them, but not submitted into evidence. The tenant's sister, acting as advocate, stated that the shelter information document from the ministry, also not submitted, indicated it began on November 1, 2010.

The parties concur that rent is \$575 per month and that the landlords hold a security deposit of \$280.

During the hearing, the landlords gave evidence that the Notice to End Tenancy had been served after an accumulation of incidents, culminating in a conflict with the tenants of the upper suite over use of the laundry facilities.

The Notice to End Tenancy had not been submitted into evidence by either party.

The landlords stated that matters had escalated after the tenant had been served with the Notice to End Tenancy and had directed an angry and profane tirade toward the landlord. This, or a similar incident, resulted in the landlords call for the assistance of police who were unable to attend.

The conflict over laundry appears to have worsened when new tenants moved in to the upper suite on April 1, 2012 and were disturbed by the fact that the applicant tenant had a right to use the laundry facilities which are on their side of the separation between the units. They further complained that the lower tenant, who has a physical disability, was doing laundry too much, a complaint exacerbated by their perception that utilities costs were split 60/40 with them paying the larger portion. In fact, the subject tenant's utilities are factored in to her rent payments.

Other issues raised by the landlord included:

The landlords statement that they became aware the tenant had a dog in September 2011, has not paid a pet damage deposit and is remiss in cleaning up after the dog. The tenant's advocate, her sister, said the tenant has had the dog for about 12 years and it was there from the beginning of the tenancy. Clean up is only delayed in inclement weather when the tenant has some difficulty navigating the yard.

Past conflicts between the tenant and her son resulted in complaints from upper tenants and neighbours. The tenants advocate stated that matter had been addressed effectively and that tenant had forbidden the son to attend the rental unit for three months and until his conduct was acceptable.

The landlords stated that they had complaints from neighbours regarding the tenant's gentleman friend who on more than one occasion had raised concerns by appearing in the back yard of the rental unit and neighbouring back yards at late night hours, apparently looking for his cat. The tenant's advocate stated that the only incident she was aware of occurred on a night when the gentleman heard a raccoon's growl went on a panicked search for his cat.

Analysis

Section 47(1) of the *Act* provides that a landlord may issue a Notice to End Tenancy for cause under a number of specified circumstances in which the conduct of a tenant has negatively impacted the landlord or another tenant.

Section 47(2) of the *Act* provides that such notice must have an end of tenancy date that is not sooner than the end of the rental period before which it is served. In this instance, as rent is due on the first of the month, the April 1, 2012 notice could not have an effective date that is earlier than May 31, 2012. An end of tenancy date is automatically corrected by section 53 of the *Act*.

In the present matter, I find that I do not have sufficient evidence to uphold the notice. In addition to having no rental agreement, I have no copy of the Notice to End Tenancy, and no corroborating documentary or third party evidence with respect to any of the matters in contention.

In addition, the tenant through her advocate has expressed her wish and intention to move to more suitable accommodation, and, by way of volunteering payment of laundry money for the tenant, the landlords have demonstrated that they too are willing to work toward a mutually agreeable resolution to the matters at issue. That includes the challenge of arranging fair allocation of the laundry facilities which I leave to the parties for the present. If the parties are not able to resolve matters, then the landlords remain at liberty to serve a new notice to end tenancy and either party can make application for further dispute resolution.

While the tenant's application has partly succeeded, I find that her conduct and that of her guests have contributed to the creation of this dispute, and that she should share the filing fee for this proceeding equally with the landlords.

Conclusion

The Notice to End Tenancy of April 1, 2012 is set aside for want of evidence, but with the understanding that the landlords may serve another such notice as they find appropriate.

I find that the parties should share equally in the \$50 filing fee paid for this proceeding and, as authorized under section 72 of the *Act*, I hereby order that the tenant may retain \$25 from the rent due on May 1, 2012 to that end.

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: April 24, 2012.

Residential Tenancy Branch