



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 1 Month Notice to End Tenancy for Cause; to order the landlord to comply with the Act, regulation, or tenancy agreement; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?

Should the landlord be issued orders as requested?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. The parties are friends and therefore only entered into a verbal tenancy agreement, whereby the tenancy started mid November 2011. The rent is \$1000.00 per month and the tenant did not pay a security deposit or pet damage deposit.

The landlord's 1 Month Notice to End Tenancy dated April 26, 2012 states for reasons that:

- The tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- The tenant knowingly gave false information to prospective tenant or purchaser of the rental unit.

- The security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant is a friend of approximately twenty years. She stated that she allowed the tenant to move as a temporary agreement while the rental unit was listed for sale. She said that she allowed the tenant to do some repairs in lieu of rent for November, but that she expected a damage deposit of \$500.00 and a pet damage deposit of \$500.00 that were never paid. The tenant argued that she dealt with the landlord's husband, and that he agreed to make the repairs in lieu of the deposit in question, and that rent for the balance of November was never mentioned or claimed.

The landlord stated that she was aware that the tenant owned a rescue dog, but did not know that it was aggressive until later. She said that she received an undisclosed complaint from by-law enforcement, and that the dog allegedly bit a mutual friend. The tenant stated that the dog is not a big concern; that it never bit any one; that the dog was abused and for that this reason prefers that visitors are not alone with the dog; and that the by-law complaint later revealed that it concerned a complaint with a different dog.

The landlord stated that she became aware that the tenant conducted a home base business for which there was no proof of proper insurance liability or business licence. The tenant stated that she entertained a crafts venture that fell through and is no longer being pursued.

The landlord said that realtors no longer want to deal with the tenant due to multiple issues; that the tenant made harassing calls to the listing realtor and the Real Estate Board; and that she now has no alternative than to try to sell the home privately. The tenant argued that she has never been made aware of a problem with any realtor. She did admit making an anonymous call to the Real Estate Board but not to make any complaint; she said that she wanted a copy of the Residential Tenancy Branch Guide for Landlords and Tenants and a list of properties for sale in the area. She said that she was prompted to make that request at the suggestion of a friend who is also a real estate agent, and who believes that the landlord's realtor may be harassing the tenant by scheduling viewings outside the 24 hour notice required under the Residential Tenancy Act. The tenant said that she called the landlord's realtor's boss once to request a viewing schedule and because she felt harassed by the landlord's realtor's short notices. She said that she went out of her way to accommodate these viewings; that she never entered into any conflict or confrontation; and that she is quite surprised by the allegations. She said that she declines to answer any questions concerning the house and refers any such questions to the landlord.

The landlord said that the tenant made open innuendoes concerning an overflowing of the bathtub that resulted in a leak, and about the soundness of the property. The tenant said that she told the realtor once about the leak, in private, to make sure the realtor or the visitors would not slip going down the stairs where the leak occurred.

The landlord said that she was not aware the tenant had a difficult time with the realtor's viewings; that the tenant's submission of the facts is slanted, and that she is now faced without the possibility of hiring a new agent in the area.

Analysis

The landlord bears the burden to prove the grounds to end the tenancy. Regarding the failure to pay the security and pet deposits, the parties' version of their agreement is now at complete odds. In the absence of a written agreement setting the terms of this tenancy, the landlord has not proven, on a balance of probabilities, that the tenant breached the Act, regulation, or tenancy agreement and I dismiss this aspect of the landlord's claim.

While I accept that the tenant called the landlord's realtor and the Real Estate Board, I find that the landlord's evidence is vague concerning any breach of the Act by the tenant. The same goes with the dog or the tenant's business. The landlord's non-specific allegations cannot be characterized as significantly jeopardizing the health or safety or a lawful right of another occupant or the landlord, or that the tenant made false accusations concerning the property. I am unable to find that specific events occurred to such a degree that provided the landlord with the grounds to issue a notice to end tenancy; rather, I find that an absence of specific written terms of a tenancy agreement and unfortunate circumstances led to a deteriorating friendship that makes this arrangement a difficult one. However these do not provide grounds to end a tenancy under the Act. I heard no evidence of ongoing, repeated, wilful activity or conduct to support allegations of seriously jeopardizing the health or safety or lawful right of the landlord. Temporary or even minor breaches of the Act, if corrected by the tenant, do not constitute grounds to end a tenancy. The threshold is considerably higher and includes proof of persistent harmful behaviour.

Conclusion

The Notice to End Tenancy is set aside and of no force or effect. Therefore the tenancy will continue. The tenant is entitled to recover the \$50.00 filing by deducting this amount from the next rental payment.

I heard no evidence concerns orders for the landlord to comply with the Act, regulation, or tenancy agreement and I dismiss this aspect of the tenant's application.

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: May 23, 2012.

Residential Tenancy Branch