



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for MT to make her application and to cancel a notice to end tenancy for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Were there extenuating circumstances that prevented the Tenant from filing her application within the required timeframe?
2. Has a valid 1 Month Notice to end tenancy for cause (The Notice) been issued in accordance with sections 47 and 52 of the *Residential Tenancy Act*?
3. If so, has the Landlord met the burden of proof to end this tenancy in accordance with section 47 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed she made her application at the BC Access Centre on April 3, 2012 and was told to wait for a call to pick up her package. She stated she did not hearing anything back for some time so she went back into the Access Centre on April 12, 2012 and they told her the fax machine was not working at the *Residential Tenancy Branch* so she had to refax everything and that is when her application was processed.

The parties agreed that the Tenant has occupied this rental unit since approximately April 8, 2008 and that she entered into a new written agreement with the new owners of the property in January 2012. Rent is payable in advance on the first of each month in the amount of \$745.00 and on approximately April 8, 2008 the Tenant paid \$397.50 as the security deposit.

The Landlord affirmed that they purchased this property January 19, 2012 and that the previous owners let the building become run down and needing numerous repairs. She stated they conducted inspections on every unit and when they entered the Tenant's unit they were surprised by the amount of filth and debris throughout the unit. The Landlord advised that the unit had dog feces throughout and noticed that the dryer vent was not hooked up to the outside so moisture was collecting inside the basement. The Landlord confirmed she did not submit evidence in support of issuing the Notice.

The Landlord advised that on March 9, 2012 they served the Tenant with a letter to clean up her unit by March 30, 2012 when they would return to conduct another inspection. The Landlord stated that when they conducted the March 30, 2012 inspection she could see the Tenant had done some cleaning but that is when they found out there was also the presence of bed bugs in the unit which the Tenant did not previously tell them so they decided to issued the 1 Month Notice.

The Tenant confirmed she has some health problems and that she has attempted to clean up her place. She acknowledged getting the letter on March 9, 2012 and stated she has done her best to try and get organized and clean up. She stated she no longer has dogs and she did inform the previous owner of the bed bugs but that he told her it would be her responsibility to have them treated. She stated they do not use that bedroom anymore because they do not want to have the bed bugs in their beds again. She stated that she did advise the new owners of the bed bugs and most of the floors were damaged as a result of a previous flood caused by her toilet not working properly.

Analysis

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance. The reasons given by the Tenant on why her application was not received by the Residential Tenancy Branch (RTB) constitutes exceptional circumstances as there was a known problem that occurred with the RTB's fax on that date. Accordingly I approve the Tenant's request for more time to make her application.

Section 47(1)(f) of the *Act* provides that a landlord may end a tenancy by giving notice to end the tenancy if the Tenant has or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property. When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

In this case, the Landlord is relying on her verbal testimony to prove the Tenant has caused damage to the unit by having an excessive amount of debris throughout the unit and by not having her dryer vented properly. The Tenant acknowledges that she has a health issue and has been working at cleaning up her unit.

While the Tenant's unit may not meet the living standards set out by the Landlord, I find there to be insufficient evidence to prove the Tenant has or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property. Accordingly I uphold the Tenant's application to cancel the Notice.

Both parties provided testimony relating to the need for repairs of this unit. Therefore I caution both parties to ensure they meet the requirements of section 32 of the Act in getting these repairs completed. I have posted section 32 of the Act to end of this decision.

The Tenant understands that if the condition of the unit is proven to be a health or safety risk in the future, the record of these events would form part of the Landlord's case should it again come before a dispute resolution officer for consideration.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The 1 Month Notice to end tenancy for cause issued March 30, 2012 is HEREBY CANCELLED and is of no force or effect.

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 15, 2012.

Residential Tenancy Branch

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.