



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant to cancel a Notice to End Tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Landlord requested that the application be amended to correctly spell the Landlord's name. The Tenant did not object. Given the consent of the Tenant I amend the application to correctly spell the Landlord's name.

The Landlord states that as he was away on holidays, he was unable to process the evidence materials for the Hearing. The Landlord requests an adjournment of the Hearing in order to process and provide evidence for the dispute. The Tenant objects to the adjournment on the basis that the Tenant is ready to proceed and that the Landlord had lots of time to provide the evidence. Given the objection of the Tenant and considering the prejudice to the Tenant that a delay would cause, I decline to grant the adjournment.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy began in 1994. The Landlord states that on May 7, 2012 the Tenant caused extensive damage to the building and has refused to pay the \$5,000.00 bill for repairs. The Landlord states that while the Tenant was out of the unit, a washing machine in the unit flooded causing damage to the unit and a hallway wall in the lower floor. The Landlord states that a plumber was called to the unit but that since the cycle had stopped there was nothing to be done by the plumber. The Landlord states that repairs to the unit were completed by a restoration company.

The Tenant states that the only damage done to the unit was to 4 pieces of laminate flooring that the Tenant had previously installed himself. The Tenant states that these pieces are now dry and back in place. The Tenant states that a small two foot area of the carpet outside the unit was wet and that a drying machine was used on this carpet to dry the moisture. The Tenant states that he had not heard of any damage to the lower floor. The Tenant states that the bill for repairs was only \$3,900.00. The Landlord states that this bill was for work completed and that the remaining amount of repairs costs are estimates for work that has not yet been completed. The Landlord states that dryers were placed inside the unit for repairs.

The Landlord states that the Tenant has been smoking on a non-smoking common deck contrary to a city bylaw and contrary to rules of the building. The Landlord states that the Tenant leaves cigarette butts and also smokes in the elevator. The Tenant states that there were never any rules about smoking before the current Landlord's Agent came to the building. The Tenant states that since the Agent came some non-smoking signs were placed on the doors of the building, however these signs are now gone. The Tenant states that other tenants use the common area deck and smoke on the deck, leaving their cigarette butts on the floor of the deck. The Tenant states that he has only been on the deck four times since a new deck was put in place.

The Landlord states that several letters of complaint have been made by other tenants in relation to noise made by the Tenant in the building. The Landlord states that on May

25, 2012, the Tenant was served with a one month notice to end the tenancy for cause (the "Notice"). Neither Party disputes that the Notice lists the following causes:

1. The tenant is repeatedly late paying rent;
2. The tenant has caused extraordinary damage to the unit or property;
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;
 - Put the landlord's property at significant risk.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. It is noted that no evidence was provided by the Landlord in relation to the first cause of repeated late payment of rent. Given the undisputed evidence of the Parties, I find that the Tenant's washing machine did cause some damage to the unit however given the lack of supporting evidence of the extent of damage and noting the Tenant's evidence that little damage occurred and then only to materials that the Tenant put in the unit, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant caused extraordinary damage to the unit or property or caused significant risk to the Landlord's property. Given the Tenant's evidence that other tenants have smoked on the common area deck, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant put the property at risk or jeopardized anyone or anything. Although the Landlord states that several complaints have been made about the Tenant making noise, given the lack of evidence of such complaints, I find that the Landlord has failed to substantiate any of the causes listed. As none of the causes listed have been substantiated by the Landlord, I find that the Notice is not valid and that the Tenant is entitled to a cancelation of the Notice.

Conclusion

The Notice is cancelled and the tenancy continues.

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: June 26, 2012.

Residential Tenancy Branch