



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause issued on June 1, 2012.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

In a case, where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

Issue(s) to be Decided

Should the notice to end tenancy issued on June 1, 2012, be cancelled?

Background and Evidence

The tenancy began on July 15, 2008. Rent in the amount of \$855.00 was payable on the first of each month. A security deposit of \$395.00 was paid by the tenant.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on July 1, 2012.

Counsel for the landlord stated there are several reasons in the notice to end tenancy, however, they are only proceeding on the reasons that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the
- landlord; seriously jeopardized the health, safety or lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

Counsel for the landlord stated on May 16, 2012, a complaint was received from the landlord. Counsel stated the landlord did not provide the tenant with written notice of a complaint.

Counsel for the landlord stated plumbers have attended at the tenants rental unit five times in the past two years to deal with plumbing issues, counsel stated the landlord believes that a vibration in the tenants unit must have been the cause of the plumbing issues. Counsel, further stated there have been no plumbing issues since January 2012.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the
- landlord; seriously jeopardized the health, safety or lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

In this case, the landlord had one complaint on May 16, 2012, the landlord did not provided a warning letter. There was no evidence to support the tenant has made unreasonable and ongoing noise to significantly disturbed another occupant.

The evidence was a plumber attends the tenant unit of 5 different occasions during a two year period and there have been no issues with the plumbing in the last six months. I find the landlord failed to produce any compelling or persuasive evidence which would lead me to conclude the tenant had seriously jeopardized the health or safety of another occupant or the landlord or put the landlord's property at significant risk.

Therefore, I grant the tenant's application to cancel the one month notice to end tenancy issued on June 1, 2012. The tenancy will continue until legally ended in accordance with the Act.

The tenant has been successful with their application and the tenant is entitled to recover the cost of filing the application from the landlord. Therefore, the tenant is allowed to deduct \$50.00 from a previous month rent payable.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause issued on June 1, 2012, is granted. The tenant is entitled to deduct \$50.00 from a future month rent payable.

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 20, 2012.

Residential Tenancy Branch