



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order requiring the landlord to comply with the Act and to recover the filing fee.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and support their documentary evidence, and to make submissions to me.

The landlord submitted evidence to the tenant, who confirmed receipt. The tenant did not supply documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled, and order requiring the landlord to comply with the Act and to recover the filing fee?

Background and Evidence

This tenancy started June 1, 2010, current monthly rent is \$933.48 and the tenant paid a security deposit of \$450.00 on or about May 29, 2010.

The landlord lives in the upper floor and the tenant lives in the basement suite.

The landlord testified she served the tenant a 1 Month Notice to End Tenancy for Cause, dated June 9, 2012, on that date via posting on the door, listing an effective end of tenancy on July 31, 2012. The tenant filed his application in dispute of the Notice on June 19, 2012, within the allowed 10 days permitted by the Notice.

The cause as stated on the Notice alleged that the tenant is repeatedly late in paying rent, has significantly interfered with or unreasonably disturbed another occupant or the

landlord, put the landlord's property at significant risk and has engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlords' relevant evidence included the Notice, an incomplete copy of the parties' tenancy agreement, a photo of two of the rental unit's windows and cautions to the tenant with an accompanying letters of explanation.

When questioned, the landlord could not state what illegal activity in which the tenant allegedly engaged.

As to the landlord's claim of repeated late payments, the landlord expressed her surprise that this issue was mentioned as she did not believe she could proceed on this ground. The landlord, after a search of her records, stated the tenant made 9 late payments.

As to the landlord's claim that the tenant has allegedly interfered with or unreasonably disturbed another occupant or the landlord, the landlord stated that the tenant speaks to her friends or asks questions of her contractors when they come to the residential property.

Another concern for the landlord was the number of hours the tenant occupies his rental unit, stating that he sometimes is present for 15-18 hours a day, which interferes with her personal business. The landlord stated that the tenant initially informed her he would not be at home much as he was a contractor.

As to the claim that the tenant is allegedly putting the property at significant risk, the landlord stated that the tenant leaves his windows open when he is away from the rental unit.

The landlord also expressed concern that the tenant was not turning down the heat and turning off lights when he was away from the rental unit. The landlord classified the utilities to the tenant as being "free," although utilities were included as part of the rent in the tenancy agreement.

I note that a letter issued by the landlord listed the month and number of nights the tenant was away from the rental unit, informing him that this violated the tenancy agreement which required the tenant to inform the landlord when he was out of town. She classified the vacancies by the tenant as "excessive."

The letter also informed the tenant that his car dripped oil on her parking space, which he occupied when she was away.

The letter also cautioned the tenant that the tenant failed to lock the windows when he was away, which put the property at risk.

The landlord also cautioned the tenant that he failed to turn down the heating and turn off the lights when he was away.

This letter accompanied four Cautions to the tenant containing each of the concerns of the landlord.

The letter also contained a notice of entry to the rental unit for the next day.

In response, the tenant stated the landlord informed him when he moved in that the windows should be closed when he's away and that he has complied with this request. The tenant further stated that when he's in attendance at the rental unit, he opens the windows 2-3 inches, as he wants fresh air. The landlord does not always know when he's there and that he actually observed her when she took the photos of the windows.

The tenant further explained that the property and windows have been secured as he made fitted sticks for the window frames, with the landlord's permission, preventing the windows from opening beyond the three inches. The tenant said that as the sticks are fitted, they cannot be removed, which is a security feature.

The tenant stated his car did not leak oil, but instead the leak came from the landlord's car, as proven by having it repaired at a named local automotive repair shop.

As to the tenant's request for the landlord's compliance with the Act, the tenant stated he has not been provided a key to his rental unit, adding that he has access to his home through the garage, which has been left open by the landlord.

The landlord stated that the tenant had a key to the rental unit.

Analysis

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

I grant the tenant's application and I set aside the landlord's 1 month Notice to End Tenancy for Cause.

The landlord bears the burden of proving she has grounds to end this tenancy. The landlord has issued a Notice to End Tenancy listing several alleged causes.

As to repeated late payments, I find the landlord submitted insufficient evidence to support this cause. In reaching this conclusion, I find no receipts or accounting records. I therefore find the landlord failed to prove that the tenant has made repeated late payments. I remind the tenant that the tenancy agreement provides that rent must be paid by the 1st of each month.

The landlord confirmed the tenant has not engaged in illegal activity, or rather the landlord could not provide evidence of a violation of federal, provincial or municipal law.

I find that the landlord has submitted insufficient evidence to demonstrate that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. A slamming door, as mentioned in one caution, leaving the rental unit without informing the landlord or staying in the rental unit too many hours is not interference or unreasonable disturbance by the tenant, but rather suggests that the landlord is monitoring the tenant's activities and attempting to micromanage the tenant's life.

The landlord's own evidence demonstrates that the windows are secured by the fitted sticks and that the windows are unable to be opened beyond a few inches.

Although there may be a term in the tenancy agreement, which was not provided to me, requiring the tenant to notify the landlord if he leaves the rental unit, I find this term is unconscionable and therefore unenforceable under the Act.

The landlord mistakenly believes that the utilities provided to the tenant under the terms of the tenancy agreement as part of his rent are "free."

The landlord has a contract with the tenant and has obligations under the *Act* as a result. I find that rather than prove a cause to end the tenancy, the landlord has demonstrated that she is unfamiliar with her obligations under the Residential Tenancy Act in providing the tenant with his right to quiet enjoyment. Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

As I find the landlord has not proven any grounds to end this tenancy, I therefore **order that the 1 Month Notice to End Tenancy dated and issued by the landlord on June 9, 2012, is cancelled and is of no force or effect.** This tenancy will continue until it ends in accordance with the Act.

As to the issue of the landlord's compliance with the Act, I accept the testimony of the tenant that he has not been provided a functioning key to the rental unit. I further **order the landlord to immediately provide functioning keys to the rental unit to the tenant.**

Finally, I find the tenant has been successful in this application and therefore, may deduct the \$50.00 filing fee for the application from one rent payment.

As the landlord appears to have little knowledge of the Act, I am enclosing a copy of a guidebook to the Residential Tenancy Act for her use.

Conclusion

The tenant's application is granted as I have cancelled the 1 Month Notice to End Tenancy for Cause dated and issued by the landlord on June 9, 2012.

The landlord is ordered to immediately provide the tenant with a functioning key to the rental unit.

The tenant is awarded the filing fee of \$50.00 and may deduct this amount from one rent payment.

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: July 12, 2012.

Residential Tenancy Branch