



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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").

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, review their documentary evidence timely submitted prior to the hearing, and to make submissions to me.

The parties acknowledged receipt of the other's evidence and no issues were raised about the submission of 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?

Background and Evidence

This month to month tenancy began on September 1, 2011, monthly rent is \$575.00 and the tenant paid a security deposit of \$287.50 at the beginning of the tenancy.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated June 22, 2012, was delivered via registered mail on that date, listing an effective end of tenancy on July 31, 2012.

The causes as stated on the Notice alleged that the tenant has allowed an unreasonable number of occupants in the rental unit, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and

has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlords' relevant evidence included the tenancy agreement, written witness statements and written communication to the tenant.

Landlord's testimony-

Cause #1-The tenant has allowed an unreasonable number of occupants:

The landlord said that the tenant was the only party listed on the tenancy agreement, yet allowed an additional person to move in to the rental unit. The landlord said he had no idea who the extra party was and he had not allowed an extra tenant.

When questioned, the landlord said that the rental unit was a duplex, had one bedroom and was approximately 800 square feet in size.

In response, the tenant said she was informed by her doctor that she required live-in care workers, due to her physical and psychological condition. The tenant also said that there are three different aides who come around and assist with her physical needs, but that none of them are permanent residents. As proof, the tenant said that the only personal property that any of the workers have at the rental unit are make-up bags.

Cause #2, 3-The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord-

The landlord said that these two issues were interrelated, did not pertain to him as he lived out of town, but rather to his former property manager, the witness in the hearing, MH.

The landlord said that MH lived next door, in another one of his rental properties, and that the rental unit and MH's rental unit were not connected with each other, but separated by a driveway and small yard.

The landlord said that he appointed MH to serve as his property manager, effective June 1, but that she resigned from the position on June 6, as she could no longer deal with the tenant.

The landlord and MH said the tenant was uncooperative in allowing repairs to the rental unit, was belligerent to MH and threatened MH's dog and MH.

The landlord and MH said that the tenant approached MH and her boss one day after MH was no longer property manager, and made unfounded accusations against MH. Additionally the tenant said that she had tape recorded MH and would send the tapes to her boss.

In response, the tenant denied threatening MH and stated that she loved MH's dog and would never hurt the dog.

The tenant also stated that she did not know the people who wrote witness statements for the landlord and contended that she was unable to question them as they did not appear at the hearing.

Cause #4-The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord said that the tenant is to "look after the yard," according to the tenancy agreement, and has not done so. In particular the tenant has piled up yard debris such as grass and vine trimmings in the front yard, which has become unsightly.

Additionally, the landlord informed the tenant that the hedge was not trimmed, in a letter to her.

In response, the tenant said that she has put grass clippings in the front, as part of a compost pile. The tenant said she has not been able to locate someone to assist her in removing the grass and ivy clippings.

Analysis

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

The tenant's application is granted and I set aside the 1 Month Notice to End Tenancy for Cause. The landlord has the burden of proving on the balance of probabilities that there were sufficient grounds to end this tenancy.

Cause #1-As to the landlord's allegation that the tenant has allowed an unreasonable number of occupants, I find the landlord failed to present sufficient evidence that the tenant had an additional occupant in the rental unit, as I accept the testimony of the tenant that no one had moved in as the persons referred to were health care workers, with no significant personal property at the rental unit. Additionally, even had the tenant allowed an occupant to live in the rental unit, I do not find one extra occupant to be unreasonable given the size of the rental unit and the fact that the tenant pays her own utilities.

Cause #2,3-As to the landlord's allegations that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or lawful right of another occupant or the landlord, the landlord said that he was not interfered with or unreasonably disturbed, but rather the allegation pertained to MH. I do not find that MH is an occupant of the residential property containing the rental unit, but rather is a neighbour of the tenant, separated by

a yard and driveway. To further illustrate, the landlord's own evidence, the letter of June 13, 2012 to the tenant referred to MH as a "neighbour."

I therefore find that the landlord failed to present sufficient evidence to support these causes.

Cause #4-I find the landlord failed to present sufficient evidence that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so. In reaching this conclusion, I had no photograph of the alleged grass and ivy trimmings, and I do not accept that the tenant was responsible for trimming hedges, as I find this contemplates more than "looking after the yard."

Additionally, to determine the materiality of the term in the tenancy agreement, I must determine the importance of the tenant to "look after the yard" in the overall scheme of the tenancy agreement. A material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy.

As the burden of proof is upon the landlord, I find that the landlord failed to substantiate that the reference to the tenant looking after the yard was a material term, as the term was handwritten at the top of the last page of the tenancy agreement, giving the appearance of an afterthought.

Conclusion

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued June 22, 2012, for an effective move out date of July 31, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

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 25, 2012.

Residential Tenancy Branch