



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNR, RP

Introduction

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause, compensation for emergency repairs and an Order that the landlord make repairs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant indicated several matters of dispute on her application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

The landlord confirmed that on June 4, 2012, a 1 Month Notice to End Tenancy for Cause was issued to replace a Notice issued on June 3, 2012. As the initial Notice was replaced, I determined that the tenant was required to dispute only the June 4, 2012, Notice and that the June 3, 2012, Notice was of no force or effect.

The tenant stated she submitted a copy of each of the 2 Notices as evidence; neither Notice was before me. However, the parties agreed on the content of the June 4, 2012, Notice; which is outlined in the background and evidence portion of this decision.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on June 4, 2012, be cancelled?

Background and Evidence

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause issued on June 4, 2012, was served on the tenant indicating that the tenant was required to vacate the rental unit on July 31, 2012. The tenant disputed the Notice within the required time-frame.

The reasons stated for the Notice to End Tenancy were that the tenant or her guest has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- That the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

Initially the landlord stated that the Notice did not reflect any reasons that fell within illegal activity and that the Notice included a reason which indicated the tenant had caused extraordinary damage to the unit. Later in the hearing it was confirmed that the only damage reason selected on the Notice fell within illegal activity.

The parties agreed that sometime after 4 p.m. on June 2, 2012, a flood occurred which originated from the tenant's unit on the 6th floor. The resulting flood set off the building sprinkler water flow alarm system; resulting in attendance by the Fire Department, a service call by a Fire company and repair costs to the landlord in the sum of \$15,831.31.

The parties agreed that the sprinkler was activated after the tenant's guest hit the sprinkler with a broom. The parties did not agree on the specific manner in which the sprinkler was activated.

The landlord submitted that their investigation determined that the tenant was sleeping and that her guest had intentionally hit the sprinkler, causing the flood. The tenant stated that she was not sleeping, but lying on her bed, when her guest accidentally hit the sprinkler located on the ceiling.

The landlord made written submissions that the ceiling height is 8 feet 4 inches; that the tenant's guest is 5 feet 6 inches tall and that the broom was 4 feet 6 inches in length. The landlord's agent attended at the unit shortly after the flood began the tenant's guest showed him how he had been sweeping and accidentally hit the sprinkler. The landlord stated that the guest's demonstration was not believable and that the broom could not have reached the ceiling while he had been sweeping.

The tenant's witness provided affirmed testimony that he had gone to the tenant's unit at approximately 3 p.m.; he had done dishes for the tenant and then began to sweep the floor. The tenant has a cat and he noticed cat hair on the broom; he lifted the broom so it was above a garbage can that is approximately 2 feet in height and when he was pulling the cat hair from the bottom of the broom he accidentally hit the sprinkler with the end of the broom, which caused the sprinkler system to activate.

The witness denied having given any demonstration of the accident. He said he was soaking wet at the time the landlord's agent came to the unit and that he was very upset by what was occurring in the unit. The witness testified that he is 5 feet 10 inches tall; 4 inches taller than the landlord estimated.

Both parties gave versions of the events that unfolded; the time of the flood, how and when the fire department entered, how long it took to shut off all of the water system and how the flood was caused.

Analysis

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.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reasons indicated on the Notice.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

“To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others.”

There is no evidence before me of any significant inference that occurred as the result of the flood that occurred. This reason was not supported by the evidence before me, as I find, on the balance of probabilities, that there was an absence of any action by the tenant to intentionally interfere with or disturb others.

I find, on the balance of probabilities, that the damage to the residential property was the result of an inadvertent act by the tenant's guest. There was no convincing evidence before me that the tenant's guest intentionally used a broom to damage the sprinkler system.

I find that it is just as likely that the tenant's guest was removing hair from the broom, that he raised the broom in the air to do so, and that the end of the handle of the broom reached the sprinkler and hit the sprinkler, causing water to flow. I found the witness' testimony consistent and spontaneous; which, combined with circumstances described by both parties, led me to accept the damage was not the result of an intentional act.

There was no evidence before me of any health, safety or lawful interest of the landlord's or other occupants that was jeopardized. The flood certainly resulted in a cost to the landlord and an inconvenience to others, but I find that the accidental cause does not support eviction for the reasons cited on the Notice. Further, the Notice issued by the landlord did not allege that the tenant had caused damage to the unit for any reason, other than illegal activity.

I find there was no evidence that the flood placed the landlord or other occupants in any danger; there was most definitely a disturbance caused as a result of the flood, but I find that this was the result of an unintentional, one-time occurrence that was absent of any malice or intent on the tenant or her guests' part.

There was no evidence before me of any significant risk that resulted from the flood; the landlord has indicated that a financial loss occurred, but eviction based on significant risk relates to risk to the property and not financial loss.

The landlord confirmed that the tenant has not engaged in illegal activity which led to the flood.

Therefore, I find that the Notice to End Tenancy for Cause issued on June 4, 2012, is cancelled and that the tenancy will continue until it is ended in accordance with the Act.

Conclusion

I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act.

The 1 Month Notice to End Tenancy for Cause, dated June 4, 2012, is cancelled.

The Notice issued on June 3, 2012, is of no force or effect.

I Order that this tenancy continue until it is ended in accordance with the Act.

The tenant has leave to reapply in relation to the balance of the matters on her application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 11, 2012.

Residential Tenancy Branch