



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on August 10, 2012. Based on the evidence of the Tenant and Landlord, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on May 1, 2012 as a month to month tenancy. Rent is \$750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$375.00 on May 18, 2012.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 31, 2012 by personal delivery on July 31, 2012. The Effective Vacancy Date on the Notice is August 31, 2012. The Landlord said the Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has additional people living in the unit, the Tenant has significantly interfered with or unreasonably disturbed the landlord, seriously jeopardizing health or safety of the landlord, putting the landlord property at significant risk, damaged the landlord’s property, adversely affected the landlord quiet enjoyment and jeopardized a right or interest of the landlord.

The Landlord said there were four issues that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). The Tenant was late paying the rent for May and June, 2012. The Landlord said say the rent has been paid and there is no unpaid rent at the present time.

2). The Tenant had a cat living in the rental unit and the tenancy agreement and the advertisement for the unit says no pets were allowed. The Landlord said the tenancy agreement says no pets allowed, but the Landlord did not send a copy of the tenancy agreement with the evidence. As well the Landlord said the ad for the rental unit said no pets, but the Landlord did not have a copy of the newspaper ad, he only had his hand written application for the newspaper ad. The hand written note for the ad application does say no pets and is requesting a non smoker.

3). The Tenant has additional people living in the unit. The Landlord said there is a male who comes and goes and stays with the Tenant on many occasions. The Landlord said the unit is a one bedroom and now the Tenant has three people living in it; the female Tenant, the male Tenant and the female Tenant's cousin.

4). The Tenants are smoking in the unit and in areas on the property that they have been told they cannot smoke in. The Landlord said he believes the Tenants are smoking marijuana in the unit and may be smoking cigarettes in the unit as well. The Landlord said he did agree that the Tenants could smoke outside away from the house and away from the air conditioner so that the smoke does not go into the house. The Landlord said the Tenants do smoke outside and they have put some furniture outside in an area that they smoke in.

The Landlord called a witness S.S. to corroborate his claims. The Witness S.S. said the Landlord asked him to watch the Tenants from his balcony which is next door. The Witness S.S. said he did this and he has seen the Tenant's cousin around the property many times in the evenings and in the following mornings, so he assumed that the Tenant's cousin was living with the Tenant. The Witness was unsure of the dates that he saw the Tenant's cousin. As well the Witness S.S. said he saw the Tenants smoking in the yard and he has smelled what he believes to be marijuana coming from the Tenants' rental unit. The Witness continued to say he has also seen a cat around the Tenants' rental unit, but he was unsure if the Tenants' actually owned the cat. The Witness said he has seen a cat around lately but he was not sure if it was the same cat as he saw earlier.

The Tenant said they had talked to the Landlord about these issues and they do not believe the Landlord has grounds to evict them for the following reasons:

1). The Tenant said their rent was paid late one month because of timing issues with the male tenant's E.I. application but there is no unpaid rent now and they will pay the rent on time on the 1st day of the month as agreed to in the tenancy agreement. The Tenants did not provide a copy of the tenancy agreement therefore the rent payment date could not be confirmed by either the Tenants or the Landlord.

2). The Tenant said they had rescued a cat caught in a trap and they only kept the cat for approximately one week. The Tenant said it was not their pet and the cat was removed from the rental unit at the end of July, 2012.

3). The Tenant said her cousin had stayed with them for approximately 1 week and then a few additional days just recently, but he is living at his girlfriends now and is not living in the rental unit nor did he living in the rental unit on a permanent basis previously.

4). The Tenants said regarding the smoking issue they do not smoke marijuana and they do not smoke inside the rental unit. The Tenants both said they talked to the Landlord and he said they could smoke outside, but not close to the house or the air conditioner. Both Tenants said they have complied with what the Landlord said about smoking. They said they only smoke outside in the smoking area.

The Tenants said they like living where they are and they have complied with the Landlords wishes. The Tenants said they did not ask the Landlord about the cat, but they did remove the cat as soon as the Landlord complained about it and it was not a pet, but a rescue situation. The Tenant said she knows that they should have asked the Landlord about the cat or they should not have taken it in. The Tenant also said they do not smoke marijuana and the Landlord and the Witness may be mistaking them for another neighbour that parties late at night and smokes marijuana. The Tenants said they like living at the rental unit, they get along with everyone and they are complying with the Landlord's rules. The Tenants requested that the Notice to End Tenancy be cancelled.

The Landlord said he is not mistaking the Tenants for the other neighbours who party and the Landlord said he wants to end the tenancy for the reasons he has stated.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlord. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant or the landlord has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47 of the Residential Tenancy Act. As well, I find the Tenants have given affirmed testimony that they have adjusted their behaviour to comply with the Landlord's rules and are willing to continue to comply with these rules; therefore I find that the

Tenants have established grounds to receive and Order to Cancel the 1 Month Notice to End Tenancy for Cause date July 31, 2012. As well the Landlord issued a second 1 Month Notice to End Tenancy for Cause dated August 31, 2012, which does not have any reasons for the Notice to End Tenancy indicated on page two of the Notice; consequently that notice is not valid as all Notices to End Tenancy for Cause must have the reasons indicated on page two of the Notice. The Notice to End Tenancy dated August 31, 2012 is cancelled as well and the tenancy is ordered to continue as set out in the Tenancy Agreement.

Conclusion

I order the 1 Month Notices to End Tenancy for Cause dated July 31, 2012 and August 31, 2012 are cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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*.

Residential Tenancy Branch