



Dispute Resolution Services

Page: 1

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, refer to documentary evidence, and to make submissions to me.

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 tenancy began on July 1, 2010, monthly rent is currently \$783.00 and the tenant paid a security deposit of \$375.00 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 July 31, 2012, was delivered by posting on the tenant's door on that date, listing an effective end of tenancy on August 31, 2012.

The tenant confirmed receiving the Notice on July 31, 2012.

The cause listed on the Notice alleged that the tenant has caused extraordinary damage to the rental unit.

The landlord's relevant evidence included a written response to the tenant's application, the tenancy agreement, and telephone call logs.

The landlord provided the following testimony in support of their Notice:

The landlord received a call from the tenant to the 24 hour maintenance line on July 29, 2012, informing the office that he, the tenant, had become upset and broke the glass covering the fire extinguisher. Additionally the message was that the tenant expressed remorse about breaking the window and wanted to pay for the glass repair.

The landlord contended that by damaging a part of the fire safety system, the landlord's property was put at risk.

The landlord also mentioned that since the Notice was issued, there was another incident involving the tenant with office personnel. Additionally the landlord said that she has been informed that the tenant is no longer permitted on the residential property and that they are to have no contact with the tenant.

The landlord confirmed not having provided proof of such restrictions.

The tenant provided the following testimony:

The tenant admitted to being mad and breaking the glass in the fire extinguisher case; however, he was immediately apologetic, called the office and said that he wanted to pay for the damage.

According to the tenant, he was informed that he should not worry about that, that the landlord would have the glass fixed and provide him with the receipt for payment.

The tenant said that he cleaned up the glass and waited for three days for the landlord to replace the glass. The tenant said this never happened and he then fixed the glass himself.

The landlord confirmed that the landlord did not repair the glass; rather the tenant did make the repairs.

Analysis

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

Once the tenant made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant has caused extraordinary damage to the rental unit.

After considering all of the evidence submitted for this hearing, I find that the landlord has provided insufficient evidence to support that the tenant caused extraordinary damage to the rental unit or residential property.

While I do not condone the tenant breaking the glass in front of the fire extinguisher, I do not find that this rises to the level which could be considered extraordinary damage, enough to end a tenancy.

In reaching this conclusion, I also considered that the landlord was immediately informed of the breakage by the tenant, expressing his remorse, that the tenant offered to pay for the damage and that landlord failed to have the glass repaired. After three days of the glass having been broken, the landlord's delay in addressing this situation leads me to conclude that the damage was not that urgent in the landlord's view.

I additionally have not considered any alleged incidents which may have occurred after the Notice was issued, as those were not the reasons behind the Notice being issued. I therefore find them irrelevant to the issues in this application.

I also find the landlord provided insufficient evidence that the tenant has been ordered to have no contact with the landlord or that the tenant is not allowed on the residential property.

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

Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, issued July 31, 2012, for an effective move out date of August 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: September 11, 2012.

Residential Tenancy Branch