



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 an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause.

Both the landlord and the tenant appeared at the hearing and each gave testimony.

Issue(s) to be Decided

Should the One-Month Notice to End Tenancy for Cause be cancelled?

The burden of proof is on the landlord/respondent to justify the Notice to End Tenancy.

Background and Evidence

The month-to-month tenancy began in 2008 and the rent is \$302.75. The landlord testified that a One-Month Notice to End Tenancy for Cause was issued and served to the tenant on October 2, 2012. The reason given for issuing the Notice was that the tenant caused extraordinary damage to the unit or property.

The landlord testified that the tenant had caused extraordinary damage to the property by cutting down a branch from a tree located on the property. Photos of the branch were submitted into evidence. According to the landlord, this action by the tenant qualifies as extraordinary damage and the landlord is seeking to terminate the tenancy on that basis. The landlord testified that the tenant breached his responsibility by taking it upon himself to remove the branch instead of notifying the landlord and allowing the landlord a reasonable opportunity to trim the tree.

The tenant testified that he requested that the branch in question be removed because of the damage it was causing to his vehicle. The tenant submitted photos of his vehicle to illustrate that debris from the tree was left in the crevices on the car and under the hood. The photos also appear to show scratches in the paint. The tenant testified that, because the landlord did not attend to the matter, he found it necessary to trim the branch on his own. The tenant's position is that the One-Month Notice to End Tenancy

for Cause was not justified under these circumstances and should therefore be cancelled.

Analysis Notice to End Tenancy

I find that section 47, permits a landlord to give Notice to end a tenancy for cause and requires a One-Month Notice completed on the proper form with an effective date that (a) is not earlier than one month after the date the landlord issues the notice; and (b) the day before the day in the month, that rent is due under the tenancy agreement. It is the landlord's burden of proof to prove that there is a valid cause under the Act to end the tenancy.

I find that section 32 of the Act imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

However, I do not accept the tenant's stance that, because he was of the opinion that landlord was remiss in not trimming the tree, this entitled the tenant to proceed with removal of the branch. I agree with the landlord's position that the tenant did contravene the terms of his tenancy by engaging in maintenance tasks that are solely the purview of the landlord, instead of following the proper process. I find that the tenant had an obligation to formally notify the landlord about his concerns and then give the landlord a reasonable opportunity to complete the requested work.

I find that, if the tenant and landlord were still not in agreement about the need for this alteration, after pursuing the above steps, the tenant would then have the option under the Act to make an application for Dispute Resolution seeking an order to force the landlord to complete the necessary maintenance tasks.

While I find that the tenant did not fully comply with the Act and agreement, I also find that the resulting damage from the tenant's noncompliant actions in removing the tree branch, were not significant enough to justify ending this tenancy for Cause.

Therefore, I find that the landlord's One-Month Notice to End Tenancy for Cause is not supported under the Act.

Based on the evidence and the testimony discussed above, I hereby order that the One-Month Notice to End Tenancy for Cause dated October 2, 2012 be permanently cancelled and of no force nor effect.

Conclusion

The tenant's application seeking to have the One-Month Notice to End Tenancy for Cause cancelled is successful.

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: November 15, 2012.

Residential Tenancy Branch