



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, RP, RR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant applied to cancel a 1 Month Notice to End Tenancy for Cause, issued on October 29, 2012; Orders the landlord make repairs and rent abatement for repairs, services or facilities agreed upon but not provided.

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 landlord provided testimony that she had not been notified of the hearing. The landlord said that she did receive evidence on November 29, 2012; that was given to her by a friend of the tenant's. The landlord called the Residential Tenancy Branch on December 4, 2012, and was told the hearing would be held. The landlord said the tenant's application did not include the correct address for the landlord.

The landlord stated she would have supplied copies of 4 letters as evidence; 3 from other occupants of the building and 1 she had written.

The tenant stated that on November 7, 2012 he mailed the hearing package and evidence to the address provided on the Notice ending tenancy. The tenant submitted a copy of the Canada Post tracking information that showed the mail was accepted on November 8, 2012. The landlord confirmed that the individual who signed accepting the mail is a maintenance person with the company.

As the landlord was at liberty to enter the 4 letters via oral testimony I determined that the landlord would not be prejudiced by proceeding with the hearing. Further, the evidence before me demonstrated that the landlord had been served with Notice of this

hearing; it is no fault of the tenant that the landlord did not share the hearing documents with the building manager.

The tenant indicated several matters of dispute on his 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.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on October 29, 2012 be cancelled?

Background and Evidence

The tenancy commenced on March 1, 2008, a deposit in the sum of \$335.00 was paid at that time. Rent is currently \$777.14, due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The tenant confirmed receipt of a 1 Month Notice to End Tenancy for Cause that was issued on October 29, 2012 and posted to his door. Within the required timeframe, the tenant applied to cancel the Notice.

The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant:

- 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;
- 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;
- adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and
- is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

The landlord stated that her property management company took over the 44 unit building 1.5 years ago; the building manager has looked after the building since February 2012.

The landlord read from a letter that she had written, that outlined concerns in relation to the tenant. The landlord stated that the tenant is vindictive, causes her concern for the safety of others; that he has alleged that the building manager would assault his children, that another occupant overheard the tenant admit he has slashed tires of vehicles in the parking lot and that the tenant has been seen drunk to the point where his children must carry him home. The children are known to go out on their skateboards at night and are thought to be misbehaving.

The landlord alleged that the tenant has placed a dead mouse on another occupant's door way and placed dog feces on that occupant's door knob.

The landlord described an incident that occurred on September 13, 2012. A cushion on the seat of a chair on a balcony caught on fire; the unit in question is occupied by an individual who has made reports against the tenant. The fire was immediately put out; the police were called. The tenant was sitting on his balcony, in the dark. The landlord said that the police suspected the tenant; but to her knowledge no charges were laid.

The landlord said she was very fearful for the safety of the other occupants but that the Notice was not issued until the end of October as she was new to the job; that she needed to consult with her manager and that eventually the regional manager issued the Notice.

The landlord said that the 3 other letters would all confirm what she had reported. The landlord confirmed that the allegations are all based on suspicions and that the tenant or his children have not been caught carrying out any of the alleged disturbances.

The parties acknowledged that their relationship has not been going well; the tenant has directed the landlord to abstain from any conversations with him.

The tenant supplied evidence that included a number of character references; he has denied the allegations made by the landlord.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I determined that the landlord provided insufficient evidence in support of the reasons given on the Notice issued on October 29, 2012. During the hearing the Notice was cancelled and the parties were told that the tenancy would continue.

A tenancy may not be ended based on suspicion and unproven allegations. There is no doubt that this tenancy is experiencing problems and that the tenant and building manager are experiencing some conflict; but in order to end a tenancy for cause the landlord has the burden of proving the reasons on the Notice. Outside of allegations, the landlord could not prove that the tenant has engaged in any of the behaviors described. The tenant has not been charged with an offence, no investigations of reports have been

completed and no letters of warning have been issued in response to legitimate concerns. Just as a tenant is encouraged to place concerns in writing to a landlord; a landlord is also encouraged to do so.

A review of section 29 of the Act was given; a copy of that section is appended after the conclusion of this decision. A tenant is not required to be home during entry that has been arranged in accordance with the Act. Entry must be for a reasonable purpose and the notice must explain the reason entry is required.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued on October 29, 2012 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

The balance of the tenant's application is dismissed with leave to reapply.

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: December 07, 2012.

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*
- (f) an emergency exists and the entry is necessary to protect life or property.*

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).