



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2000 and that the Tenant is obligated to pay rent by the first day of each month.

The male Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on October 30, 2012, which declared the Tenant must vacate the rental unit by November 30, 2012. The Tenant acknowledged receiving the Notice on November 01, 2012. The reasons cited for ending the tenancy on the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding in September or October of 2011, at which time the Tenant

agreed to remove some of his personal property from the rental unit. The male Agent for the Landlord stated that he was not representing the Landlord at that time and he is not certain whether property was moved from the rental unit. The Tenant stated that after the hearing in 2011 he removed three truck loads of property from the rental unit.

The male Agent for the Landlord stated that he inspected the rental unit on October 10, 2012, at which time he determined that the amount of property in the rental unit rendered the rental unit unsafe. He stated that the front door of the rental unit cannot be fully opened; that there is a small amount of space to stand in at the entrance to the rental unit; that the kitchen or bathroom cannot be accessed; that the rental unit is heated with baseboard heaters, which represents a fire hazard if the baseboard heaters have not been turned off; that the rental unit has two large exterior walls and there is a risk of pipes freezing if the baseboard heaters have been turned off; and that the Landlord could not make emergency repairs in the rental unit without moving a significant amount of property.

The female Agent for the Landlord stated that she inspected the rental unit on October 10, 2012, at which time she observed an excessive amount of property in the rental unit; she detected a strong odor; and she concluded that not more than two people could stand in the entrance to the rental unit.

The Landlord submitted photographs of the rental unit that were taken during the inspection on October 10, 2012, which clearly show an excessive amount of property in the rental unit.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding on October 24, 2012, at which time the Landlord's application for an early end to the tenancy was dismissed. In that decision the Dispute Resolution Officer clearly informed the Tenant that the Landlord intended to end the tenancy if the conditions of the rental unit are not immediately brought up to a reasonable health and safety standard.

The male Agent for the Landlord stated that the rental unit has not been inspected since October 24, 2012 so he is not certain whether conditions in the rental unit have changed. He stated that two days ago he noticed that the blinds on the balcony have not yet been moved, which causes him to believe that nothing in the unit has changed.

The Tenant agreed that there was a large amount of property in the rental unit on October 10, 2012; that he could access the bathroom; that he has the baseboards heaters turned off; that the rental unit is adequately heated by the adjacent units; that he sleeps on a mat that he rolls out in the entrance to the unit; that he has taken some of his belongings to a storage unit since October 24, 2012; that he has removed ½ of the property that was in the kitchen on October 10, 2012; that he took the blinds on the balcony down last night; that he has a storage unit "on hold"; and that he intends to move more property from the rental unit, although he is having some difficulty organizing assistance for the move.

The Advocate for the Tenant stated that she is making arrangements to connect the Tenant with people who will assist him with removing some of his property. The male Agent for the Landlord stated that he believes that community assistance has been offered to the Tenant in the past but that the Tenant has not been receptive to the offer.

Analysis

On the basis of the undisputed evidence, I find that the Tenant has a history of storing an excessive amount of property in the rental unit, and that this matter was brought to the Tenant's attention in September or October of 2011. Without any evidence to the contrary, I accept the Tenant's testimony that he removed a significant amount of property from the rental unit after it was brought to his attention in 2011.

The evidence shows, however, that by October 10, 2012 the Tenant was again storing property in the rental unit in a manner that places the property at significant risk. On the basis of the description of the rental unit provided by all parties and the photographs submitted in evidence, I find that the property is stored in a manner that would restrict access to the rental unit by emergency personnel and would limit the Landlord's ability to conduct emergency repairs. I therefore find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(d)(iii) of the *Act*.

Without any evidence to the contrary, I accept the Tenant's testimony that he has removed some property from the rental unit after the hearing on October 24, 2012 and that he has plans to move additional property from the unit. In the absence of evidence, such as a current photograph of the rental unit, that clearly shows the property is no longer at significant risk, I find that the Tenant has failed to establish grounds to set aside the Notice to End Tenancy.

Conclusion

As I have determined that the Landlord has grounds to end the tenancy, I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy. An Order of Possession has not been granted, as one was not requested at the hearing. The parties retain the right to reinstate the tenancy if they can reach an agreement on how to restore the rental unit to a reasonable state and to maintain it in that manner.

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: December 05, 2012.

Residential Tenancy Branch