



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 by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began in January 1997. The monthly rent is \$1,280.00 payable on the first of each month.

The landlord stated that the tenant has a history of being verbally abusive to the staff of the organization that manages the rental units in this building. The tenant denied the allegation and countered that staff were rude to her.

The tenant testified that a smoke detector in the rental unit kept going off and she made several phone calls to the landlord to attend to the problem. The tenant stated that her attempts to contact the landlord went unreturned. The landlord stated that his office did not receive any phone calls from the tenant regarding the faulty smoke detector.

Eventually on January 06, 2013 which was a Sunday, she contacted the maintenance person on site to request him to inform the landlord that the smoke detector needed repair. The tenant stated that she did not want the maintenance person to attend to the problem that same day and that all she had called for was to request him to contact the rental office on her behalf.

On the following day, the newly hired caretaker visited the rental unit. The tenant stated that the caretaker started by berating her about the presence of her dog before introducing herself. The tenant got irate because she has a permit for the dog and took offence to being questioned by a person that she did not recognize. The conversation escalated into an argument which required the intervention of the police to escort a maintenance person to take care of the smoke detector.

On January 07, 2013, the landlord served the tenant with a one month notice to end tenancy for cause. The notice was served for the following reasons;

1. Tenant or a person permitted on the property by the tenant:
 - has significantly interfered with or unreasonably disturbed another occupant or the landlord
2. Tenant or a person permitted on the property by the tenant:
 - has seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The landlord did not file any documentary evidence by way of warning letters or documentation of any other incidents to support the notice to end tenancy for cause. The landlord stated that he believed that refusing to allow the maintenance person to fix the smoke detector, was enough reason to end the tenancy because it put all the occupants of the building at risk.

The tenant stated that the smoke detector was finally replaced on January 28, some 20 days after it was removed. Both parties disputed the other's version of events.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant and/or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Based on the testimony of both parties, I find that the landlord did not file any evidence to support the notice to end tenancy. His case is entirely dependent on his version of events, a version that is disputed by the tenant who offered her own version of events. I have no basis for favouring one version over the other.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord did not have adequate evidence to support his version of events regarding the attempts made to repair the smoke detector and the tenant's alleged refusal to let him do so.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated January 07, 2013. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving the landlord and his staff reason to complain about the manner in which the tenant communicates with them. I find it timely to put the tenant on notice that, if these alleged behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: February 01, 2013

Residential Tenancy Branch

