



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNC, MNDC, FF
For the landlord: OPC, MNSD, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The landlords applied for an order of possession for the rental unit due to alleged cause, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the applications or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the 1 Month Notice to End Tenancy for Cause, to a monetary order, and to recover the filing fee?
2. Are the landlords entitled to an order of possession for the rental unit based upon the Notice, for authority to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy started on October 1, 2012, that monthly rent is \$1300.00 and that the security deposit paid by the tenant was \$575.00.

The rental unit is on the lower level and the landlord has another tenant on the upper level of a home.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlords proceeded first in the hearing to explain and support the Notice.

The landlord said that the tenant was served a 1 Month Notice to End Tenancy for Cause on February 21, 2013, by posting it on the tenant's door. The Notice listed an effective end of the tenancy date of March 21, 2013.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to March 31, 2013.

The causes as stated on the Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk, and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In support of their Notice, the landlord testified as follows:

Cause #1-The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

The causes listed are all related to the landlord's allegation that the tenant or occupant is smoking cigarettes and marijuana in the rental unit, causing significant interference to the upper tenant.

The landlord said that on October 24, 2012, the upper tenant contacted the landlord and informed him that someone was smoking in the lower unit. The landlord also submitted that the upper tenant has contacted him numerous other times about the smell of cigarette and marijuana in her rental unit coming from the lower suite through the common ventilation system.

The landlord said that on October 27, 2012, when he arrived at the rental home to do yard work, he noticed the smell of marijuana outside.

The upper tenant also informed the landlord that she believed that the tenant was growing marijuana in her rental unit, due to the scent of fresh marijuana and moisture on the windows. The landlord said he attended the rental unit to inspect, but found no evidence of a “grow-op.”

The landlord submitted that the police attended the rental unit on an unrelated matter to speak with the tenant, and that after contacting the police later on, the landlord was informed that marijuana was present in the lower rental unit. The landlord, however, said that the police would not issue a written report confirming their statement.

The landlord also stated that when landlord SD attended the upper rental unit on February 20, 2013, she noticed the smell of marijuana, leading to issuance of the Notice.

The landlord said that the upper and lower tenants share a common ventilation system, which would create the interference to the upper tenant.

Cause #2- The tenant has put the landlord's property at significant risk –

When questioned, the landlord said that there was not a significant risk to the property.

Cause #3-The tenant has breached a material term of the tenancy agreement-

The landlord contended that the tenant breached the addendum to the tenancy agreement, which states that there is to be no smoking inside the suite. The landlord said he posted a letter to the tenant about her smoking inside the suite, constituting written warning.

Tenant's response-

The tenant denied smoking inside the rental unit, but does smoke outside of her home. The tenant also denied smoking marijuana at all, either in or outside the rental unit.

The tenant submitted that she likewise has smelled marijuana when she is outside and that she does not open the back windows due to the smell of marijuana coming into her suite.

The tenant also said that the landlord has entered her rental unit at least 8 times since the tenancy began and has never smelled smoke or observed evidence of cigarettes or paraphernalia.

The tenant also countered that the police called her from the rental unit when she was not home and had not been home for hours, to talk to her son about a bonfire elsewhere in the community. The tenant said she immediately returned home, had the police come inside the rental unit, and there was no evidence of cigarettes or marijuana.

The tenant also contended that she was issued the Notice as the landlords have listed the house for sale.

Landlords' witness-

The witness, the upper tenant, submitted that the tenant has been smoking cigarettes and marijuana in the rental unit since the tenancy began, causing her to complain to the landlord numerous times.

The witness said that the shared ventilation system allowed any of the smoke to enter her upper suite, with the only relief coming when she closes her vents.

The witness said she smelled fresh marijuana in the lower suite, and that her use and enjoyment of her rental unit has been compromised, particularly for her children.

Tenant's application-

In addition to seeking an order cancelling the Notice, the tenant is also requesting a monetary order in the amount of \$200.00.

When questioned, the tenant said this amount included the filing fee and other incidental expenses, such as postage.

Relevant evidence-

The landlord's relevant evidence included the tenancy agreement, a copy of the Notice, copies of text messages between the parties, text messages from the upper tenant, a breach letter to the tenant, and written statements from two previous tenants who lived in the rental unit below the witness.

The tenant's relevant evidence included a written statement from the tenant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Tenant's application-

The landlords have the burden of proving on the balance of probabilities that there were sufficient grounds to end this tenancy for the stated causes.

In the case before me, I find the landlords submitted insufficient evidence to demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk, and

breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In reaching this conclusion, I was persuaded by the lack of direct evidence from the landlord substantiating that the tenant or occupant smoked either cigarettes or marijuana inside the rental unit. The evidence centered around complaints from another tenant.

The upper tenant said that the tenant or her son smoked in the rental unit and the tenant denied that this was the case.

The landlord, who attended and was in the rental unit at 10 times, according to the landlord's testimony, did not detect the odour of cigarette or marijuana smoke or evidence that smoking had occurred inside the rental unit.

The police were never called to the rental unit by either the landlord or the upper tenant with regard to marijuana smoking taking place in the lower rental unit.

I am not persuaded that the landlord receiving complaints from other tenants is a ground for ending the tenancy

The landlord admitted that any alleged conduct of the tenant was not a significant risk.

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

As a result, I find the landlords' 1 Month Notice to End Tenancy for Cause, dated and issued February 21, 2013, listing an effective move out date of March 21, 2013, 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*.

As to the tenant's request for a monetary order for \$200.00, the tenant failed to submit proof of incurring a cost for any amount other than a filing fee.

I therefore grant the tenant recovery of her filing fee of \$50.00, due to her successful application, and authorize her to redeem this amount by deducting \$50.00 from her next or a future month's rent payment.

Should the tenancy end prior to the tenant being able to make such deduction of \$50.00, the tenant is granted a final, legally binding monetary order pursuant to section 67 of the *Act* in the amount of \$50.00, which I have enclosed with the tenant's Decision.

Landlords' application-

As I have granted the tenant's application and cancelled the Notice, I dismiss the landlords' application for an order of possession for the rental unit. As I have dismissed the landlord's application, I also dismiss their request to recover the filing fee.

I note that the landlord asked to retain the tenant's security deposit; however I informed the landlord that this issue is a matter to be dealt with at the end of the tenancy in accordance with the Act, and therefore dismiss their request to retain the tenant's security deposit, with leave to reapply.

Conclusion

The tenant's application is granted and the Notice is cancelled.

The tenant is granted authority to deduct \$50.00 from her next or a future month's payment of rent. In the alternative the tenant is granted a monetary order for \$50.00.

The landlords' application is dismissed.

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: March 21, 2013

Residential Tenancy Branch

