



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, RR, RP, CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), for a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to make repairs, an order for a reduction in rent, and for an order requiring the landlord to comply with the Act.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application 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.

*Preliminary issue-*As a preliminary issue, I have determined that the portion of the tenant's application dealing with a request for orders for the landlord's compliance with the Act and to make repairs, a reduction in rent and a monetary order are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

I heard undisputed evidence that the tenancy began on November 5, 2012, monthly rent is \$500.00, and the tenant paid a security deposit of \$250.00 at the beginning of the tenancy.

The rental unit is in a multi unit building, all single room occupancy units.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated March 3, 2013, was delivered to the tenant by posting it on the tenant's door on that date, listing an effective end of tenancy on April 30, 2013.

The causes as stated on the Notice alleged that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant's relevant evidence included a copy of the Notice, a handwritten note from the landlord addressed to the tenant, referencing a "Fire and Safety Inspect" on March 1, a piece of paper with the words, "Sun March 3-2 pm.", a piece of paper addressed to the tenant with the words "10 am. Sunday (with the word "Sun" crossed out) inspection, and another note from the landlord to the tenant regarding a 24 hour notice for a health and safety inspection, for February 22, 2013, with the word "noon" crossed out, replace with the words "10:00 a.m."

The landlord submitted no written evidence.

In support of her Notice the landlord testified she issued the Notice due to health and safety concerns. In further explanation, the landlord said that two other occupants, who share the same level in the multi story building, approached the landlord with concerns about a fire hazard.

This caused the landlord to inspect the tenant's room, whereupon she discovered clothes, debris, and newspapers cluttering the tenant's room. The landlord said that the clothes and newspapers were touching the baseboard heaters. The landlord also said that the tenant had newspapers covering the light bulbs in the light fixture.

The landlord said that a second inspection showed the clutter and debris was worse than the first inspection.

The landlord said that she scheduled a third visit, but when attending the tenant's room, he was not there, causing the landlord to immediately issue the Notice.

In response, the tenant said that after the first inspection, he cleaned up the rental unit. The tenant said that he removed the newspaper over the light fixture while the landlord was there, and only had the newspaper over the light due to the landlord failing to provide a light cover.

As to the third inspection, the tenant said he was away that day; however he left his door open so that the landlord could inspect in his absence.

The tenant questioned why the landlord issued a Notice when she failed to perform the follow-up inspection.

Analysis

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

Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

After considering all of the evidence submitted for and at this hearing, I find that the landlord has provided insufficient evidence to substantiate the cause listed. In reaching this conclusion I was persuaded by the lack of written warnings to the tenant about any of the alleged infractions, with notice that a continuation of such activity could lead to the end of the tenancy.

I was also persuaded by the lack of any evidence or physical proof from the landlord, such as a photo of the rental unit.

Due to the lack of proof of written warnings or any physical or other proof that the tenant created a fire or safety hazard, the landlord's evidence consisted of disputed verbal testimony.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof, the landlord in this case, cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

The version of events supplied by the tenant is just as likely as not to be true compared with the landlord's version of events, and therefore I find that the landlord has not met her burden of proof with a balance of probabilities.

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

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued March 3, 2013, for an effective move out date of April 30, 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*.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

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* and is being mailed to both the applicant and the respondent.

Dated: April 03, 2013

Residential Tenancy Branch

