



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application filed by the tenant seeking to cancel a Notice to End Tenancy given for cause.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Does the landlord have cause to end this tenancy?

Background and Evidence

This tenancy began in September 2006 rent is currently \$1,498.00 per month. On April 23, 2013 the tenant was served with a Notice to End Tenancy. Although a copy of the Notice was not filed in evidence the parties agree that the grounds in the notice are under Section 47:

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (iii) put the landlord's property at significant risk;

The landlord states that in or about April 13, 2013 there was a severe backup in the sewage system of the rental property. A plumber attended and removed the pump from the sewage tank. The plumber's invoice states that he also removed "...hand wipes and mop ends" from the system. The landlords provided a photograph of the debris the plumber says he removed from the sewage system. The landlords say this is what caused the system to fail and the tenant is responsible.

The tenant says that in the early hours of April 13, 2013 there was an electrical power outage that resulted in the rental unit's sump pump being shutdown. This caused an overflow and some flooding in the downstairs bathroom via a toilet that had been persistently auto-flushing. The tenant says he immediately contacted the landlords

about the matter and a plumber was sent to make repairs. Then, on April 25, 2013 the tenant says he was served with a 1 month Notice to End Tenancy for cause. The tenant says he did not cause the system to back up and he did not place hand wipes, mop heads or any other debris on the sewage system. The tenant submits that he has lived in the rental unit for 7 years and there have been a number of situations where the plumbing system has not performed properly and these incidents have been reported to the landlord over the course of the tenancy.

The landlord did not dispute the tenant's evidence and agreed that nothing like this has happened previously. However, the landlords says there is no other way the wipes and mop head could have gotten into the system unless the tenant or his family members put them there.

Analysis

The landlord bears the burden of proving cause to end this tenancy. The evidence is that this tenancy has been ongoing for almost seven years and that while there have been some issues with the plumbing and sewer system, the parties agree that there have been no situations as described in this hearing. By all accounts this has been a successful tenancy. While it may be that wipes and mop heads were found in the system, the tenant denies that he placed these items into the system or otherwise caused any damage to the system to cause it to fail. The landlord has provided a plumbing invoice and a photograph which he says are of the mop heads and wipes found by the plumber, however, in my view, the landlord has not supplied sufficient evidence to show that tenant or someone from his family placed these items into the system or that he did anything to cause the system to fail. Overall I am not satisfied that the landlord has met the burden of proving he has cause to end this tenancy.

Conclusion

The tenant's application seeking to cancel the Notice to End Tenancy given for cause is allowed. The effect of this decision is that this tenancy shall continue as though no notice had been served.

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: May 30, 2013

Residential Tenancy Branch