



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FF, O

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by the tenant to cancel both a 1 Month Notice to End Tenancy for Cause and a 2 Month Notice for Landlord's Use of Property. The tenant also applied for a monetary order for the cost of filing this application.

Both parties attended the hearing and no issues regarding the service of documents involved in this case were raised. At the start of the hearing the tenant withdrew the application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property as he will be complying with the notice and leaving, as per the effective date on the notice, on July 31, 2013. The landlord withdrew the 1 Month Notice to End Tenancy for Cause which was issued to the tenant on May 4, 2013 for repeatedly late payments because this should have been a notice to end tenancy for unpaid rent or utilities and the tenant has since paid the outstanding amount within the allowable timelimits.

All the affirmed testimony of both parties during the hearing and the prior evidence submitted have been carefully considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to cancel the One Month Notice to End Tenancy for Cause issued by the landlord on May 23, 2013?

Background and Evidence

Both parties agreed that the tenancy started on December 1, 2011 on a month-to-month basis. Rent in the amount of \$900.00 is payable by the tenant on the first day of each month and the landlord collected a security deposit from the tenant on December 1, 2011 in the amount of \$450.00. There are no rent arrears at this moment in time.

The landlord testified that on May 22, 2013 she received a letter from Surrey By-law Enforcement stating that the suite was illegal and therefore, the tenant had to vacate the unit by the end of June, 2013. As a result, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on May 23, 2013 with an expected date of vacancy of June 30, 2013. The reason provided for ending the tenancy was due to the fact that the 'Rental unit/site must be vacated to comply with a government order.'

The letter from the Surrey By-law Enforcement officer was provided as evidence and states that the landlord needs to remove the illegal dwelling by removing the cooking facilities and the associated electrical breakers.

The landlord testified that they did not intend to do this work as they are moving into the unit themselves as the tenant was already issued with a 2 Month Notice to End Tenancy for Landlord's Use of Property on May 16, 2013.

The tenant testified that he intends to vacate the rental unit as per the 2 Month Notice to End Tenancy for Landlord's Use of Property but disputes the 1 Month Notice to End Tenancy for cause dated on May 23, 2013. The tenant testified that he should not have to be forced to leave early because the landlord had failed to get the proper permission to rent out the suite. As a result the tenant now applies to have this notice to end tenancy, dated May 23, 2013 cancelled.

At the end of the hearing, the landlord made a request for an Order of Possession in relation to the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Analysis

Having examined the notice issued by the Surrey By-law Enforcement Officer, it is clear that the current suite is considered an illegal use and the landlord has to comply with the notice in removing the cooking facilities and the associated electrical breakers.

In my analysis I find that, if the landlord takes no action at all in terms of complying with the By-law letter, then the suite is still considered illegal and not in compliance with municipal By-laws. If the landlord does comply with the notice, then this will result in the secondary suite having no kitchen facilities.

However, I find that neither of these grounds is sufficient for me to uphold the notice to end the tenancy because if the landlord intends to decommission the suite, then the tenancy is still in existence albeit the tenant will be without kitchen facilities. If the

landlord takes no action, then this would then be an issue between the landlord and Surrey By-law. The letter does not specifically state that the tenant has to vacate the unit but is simply asking for the landlord to comply with the Municipal By-laws.

Pursuant to Section 32 of the *Act*, the landlord was required to supply and maintain a rental unit that complies with the housing standards required by law. I find the landlord breached the *Act* by not supplying the tenant with a legal suite. As a result, I find that the landlord is attempting to end the tenancy due to their own breach of the *Act*, albeit this breach may not have been intentional.

As the tenant has been successful in cancelling the notice to end tenancy dated on May 23, 2013, I award the tenant the \$50.00 filing fee for the cost of this application.

The tenant is not disputing the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 16, 2013 and testified that he will be vacating the property on the effective date of the notice. Based on the request by the landlord during the hearing, I grant the landlord an Order of Possession for Landlord's Use of Property effective for July 31, 2013.

Conclusion

For the reasons set out above:

- I cancel the One Month Notice to End Tenancy for Cause issued by the landlord to the tenant on May 23, 2013.
- I grant an Order of Possession for Landlord's Use of Property to the landlord which is effective at 1:00 p.m. on July 31, 2013.
- I grant the tenant a monetary order in the amount of \$50.00 for the cost of this application.

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: June 25, 2013

Residential Tenancy Branch

