



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HELPING SPIRIT LODGE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause (the “notice”) issued on May 29, 2013.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the notice to end tenancy issued on May 29, 2013, be cancelled?

Background and Evidence

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2013.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly jeopardized the health or safety or lawful right of another occupant or the landlord; and
- put the landlord’s property at significant risk.

The landlord’s agent testified that on July 27, 2011, the tenant was provided a warning letter regarding the scent of marihuana smoke coming for her balcony. The landlord’s

agent stated there were no further issues with the scent of marihuana after the warning letter was served.

The landlord's agent testified that on May 27, 2013, the tenant was provided a warning letter regarding a smoke detector that was detached from the ceiling that was discovered during a unit inspection on May 23, 2013.

The landlord's agent testified that on May 27, 2013, when she served the tenant with the letter, she was informed by the tenant that there were bedbugs in the unit. The landlord's agent stated the tenant has failed to maintain her unit that comply with section 17 b of the tenancy agreement. The landlord's agent stated the tenant failed to notify them that a problem of bedbugs existed.

When the landlord's agent was question about the unit inspection on May 23, 2013, the landlord stated they did not notice any bedbugs, but they were only at the unit looking for health and safety concerns, such as the smoke detector.

The advocate for the tenant stated that the tenant first notified the building manager in February 2013, that she thought she had bedbugs. The advocated stated the tenant was told by the building manager to wash her clothing twice. The advocate stated the tenant followed those instructions and had no further signs of bedbugs, unit she report the problem on May 27, 2013.

The advocate stated that she attends at the tenant's rental unit to provide services at least three times per month and has never seen any signs of bedbugs. The advocated stated that the tenant has very poor eyesight due to a medical condition and notified the landlord as soon as she became aware a problem existed.

The advocate stated that the tenant has fully cooperated with the landlord and the pest control company. The advocate stated that the tenant has not put any ones health or safety at risk and has not put the landlord property at risk.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly jeopardized the health or safety or lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

The evidence of the landlord's agent was tenant had been warned by the landlord about the scent of Marihuana coming for the tenant's balcony in July 2011. The tenant corrected this behavior and there were no further complaints. I find this one incident in 2011, is not sufficient grounds to end the tenancy.

The evidence of the landlord's agent was that during a unit inspection on May 23, 2013, they discovered that the tenant had detached the smoke detector from the ceiling. The tenant was provided a warning letter.

While detaching a smoke detector could put the landlord's property at significant risk, and could be grounds to end at tenancy if the tenant continued to detach the smoke detector. However, there was no evidence that the tenant has detached the smoked detector since the unit was inspected on May 23, 2013. Therefore, I find the tenant did correct the situation within a reasonable amount of time.

The evidence of the landlord was the tenant has failed to comply with 17 b of the tenancy agreement, which is the obligation to maintain reasonable health, cleanliness and sanitary condition of the rental unit. However, on May 23, 2013, when the landlord inspected the tenant's unit there was no evidence that the tenant had failed to comply with 17 b of the tenancy agreement.

While I accept the evidence of both parties that tenant had bedbugs in her unit on May 27, 2013, sanitation is not a factor in whether you get bedbugs or not as they can hide in almost anything, including books and the detection of bedbugs can be difficult, especially if one had poor eyesight such as the tenant has in this case.

I find the landlord has failed to prove how this incident of bedbugs has significantly jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The tenant is fully cooperating with the treatment of the bedbugs.

Therefore, I grant the tenant's application to cancel the one month notice to end tenancy issued on May 29, 2013. The tenancy will continue until legally ended in accordance with the Act.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is granted.

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 21, 2013

Residential Tenancy Branch