



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Colliers International
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes CNC, MNDC, AAT, RR

Introduction

This is an application filed by the Tenant for an order cancelling the notice to end tenancy issued for cause, a monetary claim for money owed or compensation for loss, an order to allow the Tenant access to or from the rental unit for the Tenant's guests and an order to reduce rent for the loss of a dishwasher.

Both parties attended the hearing by conference call and gave testimony. The Tenant has confirmed receipt of the Landlord's documentary evidence. The Landlord states that no documentary evidence has been received from the Tenant. The Tenant states that two packages were served upon the Landlord containing the notice of hearing package and documentary evidence by Canada Post Registered Mail on the Landlord. The Landlord disputes this. The Tenant clarified that he served the Landlord at their street address for the 19th floor. The Landlord stated that their address is unit #1500 for the same street address. The Tenant's evidence is crucial to the application and the Tenant has been unable to provide any proof of service. I find that as the hearing is adjourned for lack of time and that there is no prejudice to the Landlord as they cannot properly respond to the Tenant's claim, I order that the Tenant serve the Landlord with their evidence as soon as possible following this hearing to the Landlord's address at unit #1500 as noted on the Tenant's Application and the Landlord's 1 month notice and retain some sort of proof of service to be submitted.

This is an interim decision regarding the Tenant's Application to cancel the notice to end tenancy issued for cause. The Tenant's remaining portions of the application have been adjourned for a continuation for lack of time.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

Both parties agreed that the Tenancy began on March 1, 2005 on a fixed term tenancy until February 28, 2006 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement with the previous Landlord. The current Landlord took over in 2007.

The Tenant seeks an order cancelling the 1 month notice to end tenancy issued for cause dated May 2013 which both parties have confirmed was served upon the Tenant by the Landlord in person on May 27, 2013. Both parties agreed that the notice states an effective date of June 30, 2013 and that one reason for cause was selected. The notice states, "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord."

The Landlord states that he received a text message complaint from the Tenant in unit #811 of smoke on May 22, 2013. The Landlord states that he attended unit #811 and could smell throughout the unit. The Landlord then attended the front of unit #711 and could smell smoke in the hallway. The Landlord then gave a "No Smoking" notice dated October 5, 2011 with a notation, "Suite 711, May 22, 2013, 04:30am, Tenants complaining because of smoking smell." The Landlord states that he thinks that the cigarette smoke travelled through the vents from the Tenant's unit #711 up to unit #811.

The Tenant disputes these claims and states that he does not smoke nor does his roommate smoke in the rental unit. The Tenant has also stated that he has a heart condition that would prevent him from smoking.

Analysis

As both parties have confirmed that the Landlord has served the Tenant with a 1 month notice to end tenancy issued for cause dated May 27, 2013 in person, I am satisfied that the Tenant has been properly served with the 1 month notice dated May 27, 2013.

I find on a balance of probabilities that the Landlord has failed to provide sufficient evidence for the reason for cause. The Landlord was unable to provide any definitive evidence where the cigarette smoke originated from, only stating that he could smell it in the hall in-front of the Tenant's rental unit door and in unit #811. The Landlord did not enter the rental unit or witness any smoking in the rental unit by anyone. The Landlord was unable to provide any evidence that could show that smoking was being carried out in the rental unit or by the Tenant or his roommate on the rental property. The Tenant's Application to cancel the notice to end tenancy is granted.

Conclusion

The Tenant's Application to cancel the notice to end tenancy is granted. The notice dated May 27, 2013 is set aside. The Tenancy shall continue.

This hearing was adjourned for lack of time to a continuation. Both parties shall receive a copy of this interim decision as well as a notice of hearing document for the adjournment date.

I also find that the Tenant has failed to properly serve the Landlord with his evidence. I find that as there is no prejudice to the Landlord, I order that the Tenant serve the Landlord with their evidence in its entirety that was already filed with the Residential Tenancy Branch as soon as possible following this hearing to the Landlord's address at unit #1500 as noted on the Tenant's Application and the Landlord's 1 month notice and retain some sort of proof of service to be submitted. No new evidence shall be accepted in accordance with the Rules of Procedure. The exception being the Landlord may file evidence in response to the Tenant's evidence package after receiving it.

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 27, 2013

Residential Tenancy Branch