



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant seeking an order to set aside a One Month Notice to End Tenancy for Cause and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to have the notice set aside?

Is the tenant entitled to a monetary order?

Background and Evidence

The tenancy began on or about September 1, 2012. Rent in the amount of \$560.00 is payable in advance on the first day of each month. The tenant shares a house with three other tenants.

The tenant is seeking to set aside a One Month Notice to End Tenancy for Cause. Neither party submitted a copy of the Notice; however both parties agreed that it was served on May 28, 2013 with an effective date of July 1, 2013. Both parties further agreed that the Notice was given on the basis of:

"Tenant is repeatedly late paying rent"

The tenant gave the following testimony:

The tenant stated that she has “never signed a tenancy agreement or even seen one” in regards to this tenancy. The tenant stated that no terms were ever provided to her in terms of payment of rent. The tenant stated that the other people of this hearing are co-tenants and are not her landlord. The tenant stated that she would pay the utilities bills for the home and after she collected from the other tenants she would pay her rent. The tenant said that when the owner of the property posted a notice in May 2013 that rent was to be due on the first of each and every month she has complied.

The “landlords” gave the following testimony:

The landlord stated that the tenancy agreement between all parties was verbal and that everyone was aware that the rent was due on the first of each month. The landlords stated that the tenant has been late in paying her rent for all but one month since she moved in and now seeks to end the tenancy as soon as possible.

Analysis

The One Month Notice to End Tenancy was issued due to a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. A material term is a term written into the tenancy agreement that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. When a landlord issues this notice they must provide sufficient evidence to support the issuance of the notice.

The person that presented themselves as the landlord is a co-tenant that shares the house with the subject tenant of this hearing. This individual stated that he is the named person on the lease and that he sublets the unit to the others; however he was unable to produce any documentation to support that. In addition; there is not a tenancy agreement in place, written or implied. The subject tenant was clear that there has never been a formal arrangement in terms of the date when rent was to be paid. The landlord acknowledged no formal written agreement was in place but he and his

witnesses referred to notes on the “white board “ to the subject tenant that the rent was late. The landlord was unable to provide neither documentation of the late payments nor any documentation that written warnings or cautions were given to the tenant. Based on the aforementioned, and upon careful consideration of all the evidence before me, I find that the landlords have failed to prove the tenants breached a material term of their tenancy agreement .The landlord has not satisfied me that there is cause to end this tenancy.

I find the One Month Notice to End Tenancy for Cause is of no effect or force and is hereby set aside.

The tenant made an application seeking \$420.00 for compensation. The tenant did not provide sufficient evidence to support this portion of her application and accordingly I dismiss this portion of her application.

Conclusion

The One Month Notice to End Tenancy for Cause is set aside. The tenancy continues.

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: July 11, 2013

Residential Tenancy Branch

