



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LaPage Realty Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause, as well as for an extension of time to make the application. The tenant and two agents for the landlord participated in the teleconference hearing.

At the outset of the hearing, the landlord confirmed that they had received the tenant's application and evidence. The landlord did not submit any documentary evidence. Both parties gave testimony in the hearing. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue – Extension of Time

A tenant who is served with a notice to end tenancy for cause may apply to dispute the notice within 10 days of having been served. In this case, the tenant was served the notice on June 25, 2013, and she stated that she initiated her application on Friday, July 5, 2013, the tenth day. Her application was not fully processed until Monday, July 8, 2013. I found, in the circumstances, that the tenant had initiated her application within the required time frame, and I granted her the extension of time to complete her application.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The rental unit is one of four rental units in a four-plex. The other three units are occupied by other tenants of the landlord.

On June 25, 2013 the landlord served the tenant a notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were that the tenant or a person permitted on the property by the tenant has (a) significantly interfered with or unreasonably disturbed another occupant or the landlord; and (b) put the landlord's property at significant risk.

Landlord's Evidence

The landlord stated that they received complaints from other occupants of the four-plex that the tenant has been smoking cigarettes and other "combustibles" inside her rental unit. The tenant's tenancy agreement does not permit smoking in the rental unit. The other occupants were concerned about themselves and their children being exposed to smoke. The landlord was concerned that the tenant was putting the property at risk by smoking in the unit because "it is possible some people will fall asleep while smoking ... [and] smoking will damage the unit."

The second issue was that the other occupants complained that there was excessive foot and car traffic to the tenant's unit. The landlord was concerned that the constant visits to the rental unit indicated that there was drug activity taking place in the rental unit.

The landlord did not submit copies of written complaints or have the complainants appear as witnesses in the hearing; nor did the landlord submit a copy of the tenancy agreement.

Tenant's Response

The tenant stated that she has never smoked in the rental unit, she only smokes outside. Further, the tenant denied smoking anything other than tobacco. The tenant acknowledged that she may have had more traffic to her unit in the month of March 2013, as a close friend's son had died and another friend's mother had cancer and then also passed away, and a lot of well-wishers and helpers came to the tenant's unit while her friends were there. The tenant stated that the landlord did not provide any evidence of the other occupants' complaints.

Analysis

I find that the notice to end tenancy is not valid. The landlord did not provide sufficient evidence to establish that the tenant or any of her guests either (a) significantly interfered with or unreasonably disturbed another occupant or the landlord; and (b) put the landlord's property at significant risk. In fact, the landlord did not provide any evidence that they did any independent investigation of alleged complaints against the tenant. I accept the tenant's testimony that she likely had a greater number of visitors in March, 2013, due to the tenant's personal circumstances; however, the landlord served the notice in late June 2013, and did not provide any dates that alleged incidents occurred. The landlord provided no evidence that the rental property was at any risk at all by the tenant, let alone significant risk. Therefore, the notice to end tenancy is cancelled.

Conclusion

I cancel the notice to end tenancy for cause dated June 25, 2013, with the effect that 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 30, 2013

Residential Tenancy Branch