



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding the service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

The undisputed evidence shows that the tenant moved into the rental unit in August 2013, as a subtenant, and thereafter signed a tenancy agreement, stating that the

tenancy began on September 1, 2013, monthly rent is \$715, and that the tenant paid a security deposit of \$350.

The tenant shares a home with four other tenants, each in their own bedroom. The landlord said that all the tenants were co-tenants, as they each signed the tenancy, and that she collects rent from each one of the tenants separately. The landlord denied that the 5 tenants were tenants in common. Additionally, the tenant said that he answered an advertisement and that he did not know the other 4 tenants prior to moving into the rental unit. It was not made known if the 4 other tenants knew each other prior to moving into the rental unit.

Neither party submitted a copy of the 1 Month Notice; however both parties agreed that the Notice was dated September 12, 2013, listed an effective move-out date of October 30, 2013, and listed the following alleged causes: the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant and has engaged in illegal activities that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The landlord testified that she issued the tenant the Notice on September 12, 2013, by attaching it to the tenant's door.

In response to my question, the landlord finally agreed that the tenant had not committed any illegal activities.

As to the other two listed grounds, the landlord stated that she received an email from two of the other tenants, complaining that they had concerns about this tenant. The email was dated September 10, 2013, 10 days after this tenancy began.

Some of the concerns, which were listed in the email submitted into evidence by the landlord, her only documentary evidence, were that the tenant did not pull his weight around the home, used common areas for his personal storage, and that he was "passive aggressive, condescending, disrespectful, manipulative and defensive."

The landlord alleged that she did attend the rental unit to talk with the tenant; other than that, the landlord alleged that she called the tenant, that he was aggressive and refused to meet with her.

In response, the tenant denied the behaviour as alleged against him, and that some of the other issues have been resolved.

The tenant submitted that he was happy to meet with the landlord, and that he only requested of her that she not call him during class with the disrespectful tone she used.

The tenant also requested that the meeting take place in a coffee shop near campus, due to his class schedule.

The tenant submitted a copy of the email sent to the landlord.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The landlord bears the burden of proving she has grounds to end this tenancy. The landlord has issued a Notice to End Tenancy listing two alleged causes, which are interrelated.

In the case before me, I find the landlord submitted insufficient evidence to demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or lawful right of another occupant.

In reaching this conclusion, the landlord testified, giving a version of events, and the tenant testified, giving a differing, equally probable version of events. Disputed verbal testimony is not sufficient to meet the landlord's burden of proof.

The landlord was not witness to any of the alleged incidents taking place at the residential property and the reasons, or rather concerns, listed by two of the other tenants are not of any serious nature which would lead the end of this tenancy. Rather I find the issues listed, such as the alleged failure of the tenant to clean up after himself or leaving property in the common areas, appear to be more in the nature of an adjustment period that would most likely be common in this situation, 5 tenants in a new tenancy.

Rather than the tenant giving any cause to end the tenancy, I find the landlord failed to address the equal concerns between the tenants.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issue September 12, 2013, listing an effective move out date of October 30, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant's application has been granted and I have cancelled the landlord's 1 Month Notice to End Tenancy for Cause.

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* and is being mailed to both the applicant and the respondent.

Dated: October 31, 2013

Residential Tenancy Branch

