



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery and registered mail on October 14, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on July 1, 2013 as a month to month tenancy. Rent is \$975.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$487.50 in advance of the tenancy.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated September 27, 2013 by personal delivery on September 27, 2013. The Effective Vacancy Date on the Notice is October 31, 2013. The Tenant is living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has damaged the landlord’s property, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and significantly interfering with or unreasonably disturbing another tenant or the landlord.

The Landlord said there were many incidents that lead to the issuing of the 1 Month Notice to End Tenancy and some are as follows:

- 1). The Landlord said the police called to find out who was living in the house.

2). The Landlord received an anonymous phone call that the Tenant was a theft and drug user.

3). The Landlord said the Tenant denied access to carpet installers and the carpet installers would not work in the unit for safety reasons. The Landlord provided a letter from the carpet installers that said they had some safety concerns as one of their employees was poked with a hypodermic needle that was found in the baseboards of the unit.

4). The Landlord continued to say that Tenants in the basement unit had complained about the Tenant, but they would not testify or participate in the hearing process.

5). The Landlord also said the Tenants boy friend was written up in the local paper as a drug user and violent person. The Landlord said the Tenant's boyfriend is on the rental application but is not on the tenancy agreement.

The Landlord did not supply any corroborative evidence to support the above claims except the letter from the carpet installer.

The Landlord also said that they are considering selling the property so they want the Tenant to move so the property will show better.

The Tenant said the Landlord's claims are untrue and she made the following statements regarding each of the points the Landlord made:

1). The Tenant said the Landlord never mentioned getting calls from the Police.

2). The Tenant said the Landlord did not mention anything about the anonymous caller and she does not use drugs and is not a theft.

3). The Tenant said she did not deny entry to the carpet installers and the needle in the baseboard was not hers and it most likely was from the previous tenancy as the house was a disaster when she moved in. The Landlord agreed that the house was a disaster when the Tenant moved in and the Landlord said she does not believe the Tenant uses needles.

4). The Tenant said she has a good relationship with the tenants in the other unit and there has never been a complaint from the other tenants about her, written or verbal.

5). The Tenant said she broke up with the man the Landlord is taking about on August 7, 2013 and she has not talked to him since that time.

It should be noted that the Tenant submitted late evidence that was not accepted at the hearing. The evidence was a written statement from the Tenant and the Tenant gave the evidence by testimony during the hearing. As well the Tenant asked that the Landlords evidence be omitted as it was not serviced correctly. As the Tenant did receive the evidence from the Landlord I accept the Landlords evidence. The parties were offered the opportunity to settle the dispute on their own terms but the parties did not agree to a settlement so the dispute will go to a decision.

Analysis

It appears from the testimony at the hearing that communications between the Landlords and the Tenant has broken down. There was contradictory testimony provided by both the Tenant and the Landlords regarding the facts of the situation. Although there was considerable testimony neither party submitted much supportive evidence that would corroborate their claims. As a result this is a situation of the applicant's word against the respondent's word. The burden of proving the Notice to End Tenancy has just cause lies with the Landlord and when it is just the Landlords' word against that of the Tenant that burden of proof is not met. The only corroborating evidence the Landlord submitted was the installers letter and the explanation by the Tenant that it was probably left from a previous tenancy and as the installer were in the unit within the first month of this tenancy is quite possible and it is realistic explanation. Consequently I find the Landlord has not proven the reasons for the Notice to End Tenancy dated September 27, 2013 and the Tenant has established grounds to be awarded an Order to cancel the Notice to End Tenancy. Consequently I order the Notice to End Tenancy for Cause dated September 27, 2013 is canceled and the tenancy is ordered to continue as in the tenancy agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated September 27, 2013 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: November 20, 2013

Residential Tenancy Branch

