



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, OLC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order granting more time to make an application to cancel a notice to end tenancy, and for an order requiring the landlord to comply with the Act.

The tenant, her legal advocate, and the landlord attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the landlord acknowledged receipt of the tenant's documentary evidence and confirmed that he had not supplied any documentary evidence of his own.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, make submissions to me, and make responses to the other's submissions.

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.

Preliminary issue-I have not considered the tenant's request for an order granting more time to make an application to cancel a notice to end tenancy as the tenant did in fact make her application in a timely manner.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled and for an order requiring the landlord to comply with the Act?

Background and Evidence

The undisputed evidence is that this tenancy began in November 2009, monthly rent was \$800, and the tenant paid a security deposit of \$400 at the beginning of the tenancy.

Beginning in December 2013, the tenant's monthly rent was reduced to \$640 due to a previous Decision of another Arbitrator on the tenant's earlier application for dispute resolution, pending the landlord's compliance with the orders of that Arbitrator.

The previous Decision by another Arbitrator was dated October 30, 2013, and ordered the landlord to:

1. *Hire a professional hazmat team and comply with their directions with respect to mould removal and other orders,*
2. *Hire a professional contractor to inspect the rental unit and follow that contractor's recommendations as to repairs or replacement of plumbing, roofing materials, insulation, drywall, ceiling, flooring and windows in coordination with the hazmat team, and*
3. *Provide the tenant with a copy of the professionals' reports*

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 Notice was dated November 30, 2013, was delivered to the tenant's teenage son on December 1, 2013, according to the landlord, and listed an effective end of tenancy on December 31, 2013.

The cause as stated on the Notice alleged that the rental unit must be vacated to comply with a government order.

The landlord provided no documentary evidence and instead relied upon the Decision of October 30, 2013, requiring the landlord to make the repairs as heretofore listed.

The landlord submitted that the list of repairs ordered of him required vacant possession of the rental unit.

The landlord confirmed not complying with any of the previous orders in the Decision of October 30, 2013.

In response, the tenant agreed that the repairs have not been made and that no such attempt has been made. The tenant denied that the rental unit was required to be vacant during the repairs.

Analysis

Based on the foregoing evidence, and on a balance of probabilities, I find as follows:

Once the tenant made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

The government orders to which the landlord refers in his Notice are orders for the landlord's compliance with the Act, not orders for the tenant.

I find the landlord provided no evidence that the rental unit must be vacated to comply with the Decision of October 30, 2013, requiring the landlord to make repairs. Instead the landlord has attempted to use an order requiring him to make repairs against the tenant in his attempt to evict her.

Had the landlord obtained professionals' reports proving that the rental unit must be vacant in order to bring the rental unit to a livable standard and that he had the necessary permits and approvals for such repairs, the notice issued by the landlord would be a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

Due to the above reasons, I find that the landlord has provided insufficient evidence to prove the cause listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated November 30, 2013, for an effective move out date of December 31, 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*.

As to the tenant's request for an order requiring the landlord to comply with the Act, as the landlord has already been ordered to comply with the Act in the Decision of October

30, 2013, I find this order would be redundant as the landlord remains obligated to follow the directions and orders of the October 30, 2013, Decision.

As the landlord has confirmed that he has not complied with the orders listed in the Decision of October 30, 2013, I bring to the landlord's attention the administrative penalties provision under section 94.1(b) of the Act, which allows a monetary penalty for anyone failing to comply with a decision or order of the director of the Residential Tenancy Branch.

I also bring to the attention of the landlord section 88 of the Act, which allows for delivery of documents to an adult apparently residing at the rental unit, and that service of documents to the tenant's minor children is not appropriate under the Act.

Conclusion

The landlord's 1 Month Notice to End Tenancy for Cause dated November 30, 2013, is not valid and not supported by the evidence and the tenant is granted an order cancelling the Notice.

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: January 27, 2014

Residential Tenancy Branch

