



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 the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking cancellation of a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for recovery of the filing fee.

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

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

I have reviewed all oral and written 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 matter- At the outset of the hearing, neither party raised any issue regarding the service of the documentary evidence; however the landlord submitted that she did not receive the tenant's application and Notice of Hearing until much later after the application was filed. In response to my question, the tenant said that he served his application and Notice of Hearing to the landlord via regular mail shortly after receiving the application package from the Residential Tenancy Branch ("RTB"), rather than registered mail or personal delivery as required by section 89(1) of the Act.

The tenant then stated that after the landlord notified him that she had not received the application package, he hand delivered her a copy with his January rent, which is in compliance with his obligation to serve the application and Notice of Hearing under section 89(1) of the Act.

The landlord was informed that I would not dismiss the tenant's application due to his lack of compliance with Section 59(3) of the Act, requiring the applicant to serve the respondent with their application within 3 days of making the application; however the landlord was given the option of requesting an adjournment of the hearing. She declined and the hearing proceeded to consider the merits of the landlord's Notice to end the tenancy and the tenant's application.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be cancelled and is the tenant entitled to recover the filing fee?

Background and Evidence

There is no written tenancy agreement and neither party knew the exact date the tenancy began. The landlord testified that she believed the tenancy began in June 2013, explaining that the tenant moved in with her tenant at the time, staying when that tenant vacated.

The parties agreed that monthly rent is \$800 and that the tenant paid a security deposit of \$400.

The rental unit here is in the lower portion of a home owned by the landlord, and the landlord rents the upper level to other tenants.

The landlord confirmed that she never provides written tenancy agreements with any tenant over the period of time she has rented the residential property, and that their agreements were always by way of a "hand shake deal."

Pursuant to the Rules of Procedure, 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 on November 30, 2013, by leaving it with the tenant, according to the landlord, and listed an effective end of tenancy on January 1, 2014.

The causes listed on the Notice alleged that 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 or the landlord, or has put the landlord's property at significant risk.

The landlord's relevant documentary evidence included copies of email communication between the landlord and the upper tenants.

In support of issuing the Notice to the tenant, the landlord testified that the rental unit has always been a non-smoking suite, and that the tenant was made aware through conversation that this was a condition of the tenancy.

Despite this, according to the landlord, the upper tenants have been making complaints about cigarette smoke filtering into their rental unit since October, when they began using the heat. The landlord alluded to the smoke traveling through the furnace vents into the upper unit.

The landlord explained that the upper unit is heated by an oil furnace which is located on the lower level in a separated enclosed space behind a locked door, but is not part of the tenant's rental unit space. The landlord further explained that the lower unit is heated by baseboard heaters, not the furnace.

The landlord submitted that the second hand smoke is clearly an issue for the upper tenants, has interfered with their enjoyment of their rental unit, and that due to this, it was necessary to issue the Notice to the tenant.

The landlord testified that as recently as the week of the dispute resolution hearing, she observed the tenant smoking outside the rental unit.

The landlord also alluded to the residential property being an older wooden structure, and that the smoking created a fire hazard.

In response, the tenant agreed that he understood that there was to be no smoking in the rental unit; however the tenant denied smoking inside the rental unit at all. The tenant said that his smoking was always outside the rental unit in a covered area and that he has offered to the landlord that he would agree to not smoke at all on the premises.

The tenant submitted that as he never received a response from the landlord about this offer and as the landlord seemed intent on evicting him, he has not refrained from smoking in the outdoor portion of the premises.

Analysis

The landlord bears the burden of proving she has grounds to end this tenancy and must provide sufficient evidence to prove each or any of the alleged causes listed. The landlord has issued a Notice to End Tenancy listing three alleged causes, all of which are interrelated.

After considering all of the oral evidence submitted at this hearing and documentary evidence submitted prior to this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed.

In reaching this conclusion, I relied upon the fact that there is no written tenancy agreement pertaining to this tenancy as required of landlords under section 13(1) of the Act. The purpose of a written tenancy agreement is to communicate to the parties the terms and conditions of the tenancy, which are then enforceable. If the tenancy agreement is not in written form, the terms are left open to interpretation.

In this case, I find the evidence supports that the parties did agree that there was to be no smoking within the rental unit, but I am unable to determine any other restrictions concerning smoking as there was no further proof as to any other restrictions about smoking.

I find that the landlord failed to prove that the tenant has violated this term of the verbal tenancy agreement by smoking inside the rental unit. As I find that there is no proof that the tenant was acting in contradiction of the tenancy agreement concerning smoking inside the rental unit, I cannot find that he has significantly interfered with or unreasonably disturbed other occupants or seriously jeopardized the health or safety or lawful right of other occupants.

I also find the landlord submitted insufficient evidence that the landlord's property was placed at significant risk due to the actions of the tenant.

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 issued on November 30, 2013, for an effective move out date of January 1, 2014, 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.

Due to his successful application, I also award the tenant recovery of the filing fee of \$50 and I direct that he withhold the amount of \$50 from his next or a future month's rent payment in satisfaction of this monetary award.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice, and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

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 30, 2014

Residential Tenancy Branch

