



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, FF, OLC

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause set aside, an order to have the landlord comply with the Act, regulation or tenancy agreement, and an order to have repairs conducted to the unit, site or property. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. This matter was conducted over two dates to allow the parties to fully present and respond to all evidence, testimony and documentation.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about July 31, 2013. Rent in the amount of \$2975.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1487.50 and a pet deposit of \$1487.50.

The landlord gave the following testimony:

The landlord stated that the tenant was given a notice to end tenancy on October 23, 2013 for repeated late rent payments. The landlord stated that the tenant had been late in paying her rent for the months of September and October. The landlord stated that subsequent to the notice being issued, the tenant was late in paying the rent for the months of December, January, and February. The landlord stated that the tenant was to provide 11 post dated cheques as per their tenancy agreement. The landlord stated that the tenant has not provided those cheques and is in breach of a material term of their agreement. The landlord stated that the tenancy should end on the basis of both these infractions and seeks an order of possession. The landlord stated that the tenant is exaggerating the severity of the need for repairs. The landlord stated that the blinds needed a minor adjustment, the toilet needed a single bolt and that the unit was very clean. The landlord stated the tenant was putting unreasonable restrictions on him to conduct repairs with very limited access and unusual time slots. The landlord stated that all repairs have been conducted.

The tenant gave the following testimony:

The tenant stated that she has been late in paying the rent for September and December. The tenant disputes that she was late for the month of October as she had left the cheque for the landlord in their shared mailbox and that "I have no control over when he picks up

the cheque or deposits it". The tenant stated that in regards to other months in question; the money was deposited on the first but as they landed on a holiday or weekend it is posted the next business day which makes it "looks like its late but it's not". The tenant stated that the landlord will not communicate with her except to pick up the rent. The tenant stated that she had to clean the unit when she first moved in. The tenant stated that she was on her "hands and knees for seven hours" cleaning. The tenant stated that the blinds and a window are still in need of repair.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility to provide evidence for the basis of issuing the notice. At the time the landlord issued the notice the tenant had paid the rent late twice as he alleges, and as such I address the issue based on the date of the notice was served. Two late payments do not meet the definition of repeatedly late rental payments as per the Residential Tenancy Policy Guidelines. The landlord also issued the notice for a material breach of the tenancy agreement; the tenant did not provide post dated cheques.

The landlord has not satisfied me that this term is so vital that any breach of it would constitute the termination of the tenancy. Based on all of the above and on the balance of probabilities I dismiss the One Month Notice to End Tenancy for Cause dated October 23, 2013 with an effective date of November 30, 2013 is hereby set aside. The notice is of no effect or force, the tenancy remains in effect.

The tenant has also applied seeking some compensation for cleaning and to have some repairs conducted. The tenant has not satisfied me of either claim. The tenant has not submitted sufficient evidence to support her claim. Based on the above and on the balance of probabilities I dismiss the remainder of the tenants' application.

As the tenant has been partially successful in her application she is entitled to the recovery of the \$50.00 filing fee. The tenant is entitled to a one time rent reduction of \$50.00 for the rent due on March 1, 2014.

Conclusion

The One Month Notice to End Tenancy for Cause dated October 23, 2013 with an effective date of November 30, 2013 is set aside. The tenancy remains in effect.

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: February 12, 2014

Residential Tenancy Branch

