



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on June 01, 2012. The accommodation is subsidised housing and is allotted and rented based on a tenant's income and family size

On December 23, 2013, the landlord served the tenant with a one month notice to end tenancy for cause. Neither party filed a copy of the notice to end tenancy but both parties agreed that the notice was served for the following reasons;

1. Tenant or a person permitted on the property by the tenant:
 - has put the landlord's property at significant risk
 - Has seriously jeopardized the health or safety or lawful rights of the landlord or neighbours

The landlord stated that the rental unit is filled with extreme amounts of the tenant's belongings and this has resulted in infestations of cockroaches and more recently mice. The landlord acknowledged that the tenant has health issues which include memory loss and the need for a wheelchair. The landlord stated that since the start of tenancy he has carried out several pest control treatments inside the rental unit after providing appropriate notice to the tenant. The last treatment was on January 29, 2014 and the landlord stated that the tenant did not prepare the unit in an adequate manner.

The Health Care Worker (DC) stated that she started working with the tenant in August 2013 and since then she has personally assisted the tenant by removing a great deal of the clutter and preparing for the treatment on January 29. DC stated that she works with the team that looks after problems of hoarding and the tenant did not fit the criteria of a hoarder. DC acknowledged that the tenant has excessive belongings and stated that she has worked to reduce the tenant's belongings to acceptable limits.

DC stated that she followed the instructions provided by the landlord, to prepare for the treatment on January 29. DC stated that she boxed the tenant's belongings and placed them away from the wall. DC was informed that the tenant and his cat needed to be out of the unit from 9:00 am to 1:00 pm and accordingly made arrangements for the tenant and his cat to be housed and taken care of for this time frame. She stated that when she arrived at 8:30am to assist the tenant, the landlord informed her that the treatment would be done from 10:00 to 10:30 am.

She returned to the rental unit and spoke with the technician who informed her that one hour away from the unit for the tenant and his cat, was sufficient for the treatment that was carried out. DC stated that the treatment that was carried out consisted of spraying and laying bait which was not the treatment that she was given to understand would be carried out and which required the tenant and his cat to be away for four hours.

The landlord stated that the preparation was not adequate and the full treatment could not be carried out. The treatment has now been rescheduled for February 26, 2014.

The landlord filed photographs taken prior to the date the notice was served. He agreed that since then the tenant has made efforts to reduce the clutter and has made changes as requested by the landlord.

The landlord referred to issues of clutter and pest infestation dating back to the start of tenancy. However the tenant was not served with a warning letter or put on notice regarding the possibility of the tenancy ending due to the accumulation of belongings that may have caused the pest infestation. In the last six months, since the tenant has obtained support, the landlord agreed that the support workers and the tenant have cooperated with the landlord, but still maintained that the preparation for the treatments was not adequate.

DC stated that at the time of this hearing, there were no visible signs of cockroaches in the rental unit and that there was a single sticky patch with one cockroach. She stated that all the cupboards were cleaned out and most of the clutter was removed. DC stated that she believed that the infestation was no longer present but agreed to fully cooperate with preparing the unit for the next treatment.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has put the landlord's property at significant risk and has seriously jeopardized the health or safety or lawful rights of the landlord or neighbours

Based on the testimony of both parties, I find that the landlord did not serve any written warning letters to the tenant to inform him that the condition of the rental unit was not acceptable. The landlord stated that he gave the tenant verbal warnings but agreed that the tenant has memory loss issues. Therefore I find that the tenant was not put on

sufficient notice that his actions may have been putting the landlord's property at significant risk.

I further find that the tenant's support team cooperated fully with the landlord with regard to reducing clutter and preparing the rental unit for pest control treatments. The landlord filed photographs that were taken prior to the service of the notice to end tenancy but agreed that the tenant has made positive changes to the rental unit since then.

I accept that the tenant may have a tendency to accumulate items but I find that the tenant and his support team cooperated with the landlord's requests. The rental unit may not have been prepared to the standards of the landlord, but I am not satisfied that this justifies bringing this tenancy to an end. I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated December 23, 2013. As a result, the tenancy shall continue in accordance with its original terms.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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

