



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenant applied to cancel a 1 month Notice to end tenancy for cause issued on March 4, 2014 and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the Notice of hearing package; the tenant received the landlord's evidence.

Issue(s) to be Decided

Should the 1 month Notice to end tenancy for cause issued on March 4, 2014 be cancelled?

Background and Evidence

The landlord and the tenant agreed that on March 4, 2014 a 1 month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit by April 3, 2014.

The reason stated for the Notice to end tenancy was that the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord made a notation on the Notice which indicated the reasons of repeated smoking and disturbing the landlord and these reasons were confirmed during the hearing.

The tenancy commenced on September 1, 2013, rent is \$875.00 due on the 1st day of each month. The signed tenancy agreement and an addendum were supplied as evidence.

The addendum indicates that smoking inside the unit is prohibited. The addendum also indicates that the tenant will keep noise (music, loud talking, TV noise) to a reasonable level at all times and to a minimum between the hours of 10 p.m. and 8:30 a.m. on weekdays and 11 p.m. and 9 a.m. on weekends. The tenant also acknowledged the clause of the addendum that limits the accommodation for use of a guest, no more than 2 nights per week and that he may also have his 2 children in the home up to 50% of the time.

On December 9, 2013 the landlord sent the tenant an email reminding the tenant that he had agreed not to have guests stay more than 2 nights per week. The landlord explained that the tenant's girlfriend had awakened the landlord at 5:30 a.m. by slamming the door, when going out to smoke. The landlord stated she had overlooked his girlfriend parking on the property, but that the smoking and smokers cough were causing unnecessary noise and was disrespectful. The landlord asked that the tenant's guest cease smoking or spend more time away from the tenant's unit.

The landlord said the tenant had agreed that smoking would take place away from the patio and windows of the home. The landlord stated that the tenant and his girlfriend have shown little regard for the landlord's request that smoking not occur close to the landlord's window. The tenant's girlfriend smokes under the patio roof, which traps the smoke, causing it to enter the home. The landlord said the girlfriend has a smoker's cough and that she slams doors when going out in the early hours of the morning to smoke and that this activity is causing a disturbance.

The landlord said the tenant's guest had been staying at the unit beyond the allowable 2 nights per week; there were no concerns in relation to the tenant's children. The tenant responded that his guest had stayed no more than 9 nights since January 2014.

The landlord said that during January and February 2014 she and the tenant were away for much of the time and that no problems occurred.

The parties agreed that at 1:30 a.m. on March 3, 2014 the tenant and his girlfriend arrived at the rental unit. This late arrival awakened the landlord and she could not get back to sleep. The next day the landlord issued the Notice ending tenancy.

The tenant said that he did not know the smoking was an issue until he received the December 9 email, at which point he asked his guest not to smoke near the windows. The tenant said that any smoking now occurs well outside of the legal distance of 3 meters.

The tenant stated that the landlord should not be able to limit how often he has guests stay in the home. The tenant referenced clause eleven of the standard Residential Tenancy Branch tenancy agreement that was signed; which indicates that the landlord must not stop the tenant from having guests under reasonable circumstances. The agreement also indicates that the landlord must not impose restrictions on guests. The landlord responded that the tenant agreed that he would have his 2 children present up to 50% of the time and that he would limit overnight guests to no more than 2 nights per week. The addendum indicated this clause was included in order to avoid overcrowding in the unit.

Some discussion occurred in relation to parking. The tenancy agreement terms provide 1 on-site and one off-site parking spot. Parking for more than 2 vehicles is not provided.

The tenant agreed that on 1 occasion he swore at the landlord's dogs, as they were barking. The tenant said he also sworn when he walked into a spider web; which startled him.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

In reaching this conclusion I considered the tenancy agreement addendum which does not prohibit the tenant or his guests from smoking on the residential property. The landlord did not place any restrictions on smoking outside of the unit and is now bothered by the smoke. When crafting the tenancy agreement addendum the landlord failed to anticipate the need for restrictions on smoking outside. Therefore, in the absence of a term prohibiting smoking on the residential property I find that the reason for disturbance based on smoking is not supported.

I have considered the warning given to the tenant in December 2013 and find that the tenant did take the landlord's concerns into account. No further problems occurred until March 3, 2014, when the tenant returned home from a trip. This late night entry, which disturbed the landlord, resulted in the landlord issuing the Notice. I find that a 1 time occurrence which happened more than 2 months after the tenant was first informed of the need to respect the landlord's need for quiet and a smoke-free environment fails to support an end of tenancy.

Therefore, in the absence of evidence that the tenant has significantly interfered with or unreasonably disturbed the landlord I find that the Notice ending tenancy issued on March 4, 2014 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

The tenant is now aware of the landlord's concern in relation to smoke entering her unit, the parking arrangements included as a term of the tenancy and the need to ensure the landlord is not disturbed during the night.

In relation to the limits placed on guests, section 30 of the Act prohibits a landlord from unreasonably restricting access to the unit by a person permitted on the property by a tenant. The tenant has signed a tenancy agreement that included a term that set out how often a guest and his children could stay overnight in the unit; this term does not otherwise limit access to the unit by the tenant's guests.

As the application has merit I find that the tenant is entitled to deduct the \$50.00 filing fee from the next month's rent that is due.

Conclusion

The 1 month Notice ending tenancy issued on March 4, 2014 is of no force and effect.

The tenant is entitled to deduct the \$50.00 filing fee from the next month's rent that is due.

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: March 18, 2014

Residential Tenancy Branch

