



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated January 13, 2014

Both parties were present at the hearing. The tenant was assisted by an advocate. The landlord had 2 witnesses in attendance.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The One-Month Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and that the tenant had seriously jeopardized the health safety or lawful right of another occupant or the landlord. The Notice also indicated that the tenancy was being ended as the tenant engaged in illegal activity that has or is likely to damage the landlord's property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated January 13, 2014 showing an effective date of February 13, 2014. The tenant also submitted written testimony outlining the basis of their dispute.

No evidence was submitted by the landlord.

The landlord gave testimony that the tenants have been “wasting water” by draining the hot water tanks in the complex. The landlord’s position is that this would suffice as cause to end the tenancy.

The landlord testified that the rental unit is located in a 39-unit building. The tenant’s rent is \$750.00 and water usage is included in the rent.

According to the landlord, the tenant apparently has been heard running the hot water for up to 6 hours per day. The landlord testified that the tenant’s continual waste of hot water has repeatedly caused the residents in other suites to lose access to hot water..

The landlord testified that the tenant has been verbally cautioned on more than one occasion to stop draining all of the available hot water. The landlord acknowledged that no written warnings were issued to the tenant.

When asked what proof the landlord had that these tenants were solely responsible for the hot water deficiency, the landlord produced two witnesses.

One witness has lived next to the rental unit for several months and testified that the tenants are continually running the water for hours at a stretch.

The second witness testified that he does not live next to the unit, but has observed the sound of water running when he passes the tenant’s door in the hallway.

Both witnesses testified that they could not get any hot water in their unit at certain times because the water had apparently been depleted by the applicant tenant.

The landlord stated that the 2 water heaters serving the building had sufficient capacity to supply the entire complex under usual circumstances and that the equipment was maintained in good working order. However, if one unit constantly runs the hot water, this will reduce the availability of hot water for other residents in the complex.

The landlord did not submit any documentation confirming that the equipment was in good working order and was well maintained, but pointed out that there was never any problem with the hot water supply for the past 40 years until now.

The tenant acknowledged that they do use a lot of hot water due to medical issues, but estimated their usage at not more than 3.5 hours per day. The tenant testified that they

did not “waste” the water as the landlord is alleging but utilized it for showers and baths necessary for their medical conditions. The tenant pointed out that there was no stated limitation on the use of water in the tenancy agreement.

The tenant stated that their usage of water would be vastly reduced if the landlord had granted the tenant permission to install some safety handles in the bathroom, as this would enable them to reduce the amount of time taken for showering and bathing. The tenant testified that the landlord denied the tenant’s request to install these safety handles at their own cost. The tenant also stated that, had they received a written warning from the landlord, they would have altered their bathing schedule to use less water at one time.

The tenant feels that the One Month Notice to End Tenancy for Cause has no merit and should be cancelled.

Analysis

The burden of proof is on the landlord to justify the Notice.

Given that the complex has 38 other units all using the same system, I find that there is a possibility that the residents occupying some of the other suites could also be using a large amount of water.

Although the landlord testified that the hot water system is adequate and in good repair, I find that the landlord failed to offer evidentiary proof to verify that no other mechanical or technical problem exists with the hot water system. Therefore, I find that there is no way to know for certain whether or not some other issue could possibly have impacted the hot water supply.

I find that the landlord has not sufficiently proven that the hot water depletion intermittently interrupting hot water to other units is due solely to this particular tenant’s actions.

That being said, I do accept the testimony of both parties confirming that the tenant utilizes a significantly high amount of hot water on a regular basis as part of their lifestyle, whether the average use is 3.5 hours per day as stated by the tenant, or 6 hours per day as alleged by the landlord and the landlord’s witnesses..

However, I find that, in order to terminate the tenancy for cause, the landlord should be prepared to prove that the tenant is actually committing a violation of the Act or the tenancy agreement. I find that neither the Act nor the agreement impose any limits on hot water usage by tenants.

I also accept the tenant's testimony that they will endeavour to minimize their usage of hot water in future.

For the reasons above, I find that the One-Month Notice to End Tenancy for Cause is not sufficiently supported by the evidence and I find it must be cancelled.

The tenant is cautioned that this decision will serve as a warning to the tenant that they should avoid wasting hot water and refrain from purposely draining all of the hot water in the tanks of the complex at one time.

Based on the evidence before me, I hereby order that the One-Month Notice to End Tenancy for Cause dated January 20, 2014, be cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and the request to cancel the One-Month Notice to End Tenancy for Cause is granted.

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 11, 2014

Residential Tenancy Branch

