



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF O

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, the landlord confirmed that he had received the tenant's application and evidence. The landlord did not submit any documentary evidence. The tenant only submitted the first page of the notice to end tenancy; however, the tenant read the causes indicated on the notice, and the landlord agreed on the alleged causes indicated. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue

In the hearing, the landlord referred to the following written statement in the tenant's application for dispute resolution: "March 03/14 I told the landlord I have a place for May 01/14 and need to stay for one more month." The landlord stated that he relied on this statement as notice that the tenant intended to vacate the unit, and he signed a tenancy agreement with a new tenant for May 1, 2014. In the hearing the tenant stated that he intended, as set out in his application, to dispute the notice and remain in the rental unit.

I found that the tenant's statement in his details of dispute did not amount to written notice that the tenant intended to vacate the rental unit, particularly as he filed an application to dispute the notice. In any case, the landlord did not apply for an order of possession pursuant to the tenant's written notice to vacate. I advised the parties that if I did not cancel the notice to end tenancy for cause, the tenancy would continue and the landlord would have to seek information regarding the other tenancy agreement.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began in May or June 2013. There was no written tenancy agreement. The parties agreed that the monthly rent was \$900, due in advance on the first day of each month.

On March 1, 2014 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated the following alleged causes for ending the tenancy:

- 1) repeated late payment of rent;
- 2) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 3) the tenant has engage in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant;
- 4) the tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable time after the landlord gives written notice to do so;
- 5) the tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit or property; and
- 6) the tenant failed to pay a security or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

In the hearing the landlord acknowledged that he was not alleging any illegal activity by the tenant; and the landlord did not give the tenant a written notice to correct a breached material term. I therefore did not consider the third or fourth alleged causes for ending the tenancy. I find that alleged causes five and six are also not applicable to this matter, as there was no evidence led that the tenant knowingly gave false information to a prospective tenant or purchaser; and as there was no written tenancy agreement, there could not be any required date set out to pay a security or pet deposit. I therefore only considered the first two alleged causes to end the tenancy.

Landlord's Evidence

The landlord stated that the tenant was late paying rent every month except April 2014. The landlord stated that even when he is not home, his wife is home 23 or 24 hours a day to receive rent payments.

In regard to the allegation of unreasonable disturbance, the landlord stated that on February 14, 2014 the tenant was stomping on his floor at night, and the tenant living below complained to the landlord.

Tenant' Response

In regard to the payment of rent, the tenant stated that he gets paid on the first and the fifteenth of each month, and he cannot pay the rent on the first if it falls on a weekend or holiday. The tenant stated that he had a verbal agreement with the landlord's wife that it was okay for the tenant to pay late if he could not pay on the first.

In regard to the allegation of unreasonable disturbance on February 14, 2014, the tenant stated that he was drunk on tequila, dancing with his dead wife's ashes in his arms.

Analysis

I find that the notice to end tenancy is not valid.

In regard to repeated late payment of rent, I accept the tenant's evidence as likely that he had a verbal agreement regarding paying rent after the first of the month. The landlord's evidence supported the fact that the tenant made most of his rent payments to the landlord's wife, not the landlord himself. However, I caution the tenant that as of the date of this decision it is clear that the landlord does not accept this agreement and the tenant must pay his rent on or before the first of each month.

In regard to the allegation of unreasonable disturbance, I find that the landlord did not provide sufficient evidence to establish that the one incident on February 14, 2014 was so disruptive as to justify ending the tenancy. I caution the tenant that this decision serves as his final warning regarding creating unreasonable disturbances.

As the tenant's application was successful, he is entitled to recovery of the filing fee for the cost of his application.

Conclusion

I cancel the notice to end tenancy dated March 1, 2014, with the effect that the tenancy continues until such time as it ends in accordance with the Act.

I grant the tenant an order under section 67 for the balance due of \$50. The tenant may either deduct \$50 from his next month's rent or serve the order on the landlord and take steps to enforce the order in Small Claims Court.

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: April 28, 2014

Residential Tenancy Branch