



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant to cancel a notice to end tenancy for cause.

Neither the landlord nor the tenant attended the conference call hearing, however the tenant was represented by a person who identified himself as a social worker acting as an advocate for the tenant. The advocate provided affirmed testimony, and stated that to the best of his knowledge, the landlord was personally served by the tenant on March 6, 2014 with the Tenant's Application for Dispute Resolution and notice of hearing documents. Subsequently, the landlord and the tenant's advocate exchanged emails discussing a possibility of adjourning the hearing because the landlord was not available for today's hearing. The Residential Tenancy Branch had advised the landlord that it could only be adjourned if the tenant agreed. The tenant's advocate left it to the tenant to decide whether or not to agree to the adjournment, who did not agree, and the advocate advised the landlord by email. In the circumstances, I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the conference call hearing was the tenant's advocate.

All testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The tenant's advocate testified that this fixed term tenancy began on September 6, 2013, expires on February 28, 2015, and the tenant still resides in the rental unit. Rent in the amount of \$860.00 per month is payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$395.00 and a pet damage deposit was collected at a later date, however the advocate does not know the amount or the date paid. Both deposits are still held in trust by the landlord. A written tenancy agreement has been signed by the parties, but a copy has not been provided for this hearing.

The tenant's advocate further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit, and he believes it was posted on March 1, 2014. A copy of the notice has not been provided for this hearing, but the advocate testified that it is dated March 1, 2014 and contains an expected date of vacancy of March 31, 2014. The reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- Tenant has caused extraordinary damage to the unit/site or property/park.

The tenant's advocate testified that according to the tenancy agreement, the tenant is permitted up to 2 people to reside in the rental unit, however, the tenant resides there alone. A guest stayed at the rental unit with the tenant, but only for 2 nights.

The tenant's advocate also testified that written beside the second reason, the landlord has written, "dog urinating in hallway." He has never been to the rental unit and knows nothing about the circumstances.

Beside the reason respecting extraordinary damage, the landlord has written, "strong odor." The tenant's advocate has been in touch with the tenant and the tenant's mother. The tenant's mother has provided the advocate with photographs and states that they depict a decently clean rental unit, and the tenant's mother and sisters have advised that the tenant keeps a decent home.

The tenant's advocate requests that the notice to end tenancy be cancelled.

Analysis

Where a tenant disputes a notice to end tenancy, the onus is on the landlord to prove its validity which can include the reasons for issuing it. The tenant's advocate testified that the notice to end tenancy was issued on March 1, 2014 and contains an expected date of vacancy of March 31, 2014. The *Act* requires that the notice end the tenancy effective on a date that is not earlier than one month after the date the notice is received by the tenant and the day before the day rent is payable under the tenancy agreement. The *Act* also states that incorrect effective dates are changed to the nearest date that complies with the *Act*. The tenant's advocate testified that the notice was posted to the door of the rental unit and is dated March 1, 2014. He also testified that the tenancy agreement provides for rent to be payable on the 1st day of each month, and I therefore find that the nearest effective date of vacancy that complies with the *Act* is April 30, 2014.

The tenant's advocate also testified that only the tenant resides in the rental unit, and in the absence of any evidence to the contrary, I accept that.

The tenant's advocate also testified that he has only seen photographs and relies on information from the tenant and the tenant's family about a strong odor, but each state that the tenant keeps a decent home. The tenant's advocate has no information about the dog urinating in the hallway, however, again in the absence of any evidence to the contrary, I am unable to determine that the landlord had cause to issue the notice to end tenancy. The notice to end tenancy is hereby cancelled.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

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 22, 2014

Residential Tenancy Branch

