



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on March 28, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on or about April 2, 2014.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated March 28, 2014 and setting the end of tenancy for April 30, 2014.

Background and Evidence

The tenancy began on May 29, 2005. The present rent is \$710 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$342.50 at the start of the tenancy.

Analysis

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d) and (h) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

....

(iii) put the landlord's property at significant risk;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord testified the tenant was given an eviction notice in October 2013 for using the hallway for personal storage. They testified the Fire Department had completed an inspection and stated that the hallways must be clear of all personal belongings. Prior to giving that eviction notice they gave the tenant three notices with no response. Her storage was finally removed and the landlord agreed to cancel the October eviction notice.

The landlord further testified that 4 months later they discovered the tenant had placed personal items including a 7 foot stick and metal fencing in the hall. The landlord testified this is contrary to Fire Regulations and would void their insurance policy.

The tenant testified she placed those items in the hall as she was painting her bedroom. She further testified the items remained there for 1 ½ days before they were returned to her rental unit. The tenant also stated other tenants have left belongings in the hall including the landlord's son (who lives in the rental unit). The landlord responded saying the belongings were left in the hall for about one month. She has warned all other tenants about the problems of leaving stuff in the hall..

Analysis

The landlord has the burden of proof to establish sufficient grounds to end the tenancy.

The landlord alleged the tenant has breached a material of the tenancy agreement by leaving her personal belongings in the hall contrary to section 47(1)(h). This section provides that the landlord has grounds to end the tenancy where the tenant has failed to correct the situation within a reasonable time after being given written notice to do so. The landlord has failed to give the tenant written notice with respect to the belongings that are the basis of the March 28, 2014 notice. Further, the landlord failed to prove the problem was not corrected within a reasonable time. The tenant testified the belongings were removed from the hall after 1 ½ days. The landlord testified it was a month but insufficient evidence was presented to establish this allegation. I determined the landlord has failed to establish sufficient grounds under section 47(1)(h).

The landlord alleged the tenant has put the landlord's property at significant risk. The landlord alleged their insurance would be voided by the failure to remove the belongings. However, the landlord failed to present their insurance policy or other evidence to support this testimony. The landlord also testified it breached fire regulations. Again the landlord failed to present evidence to support this allegation. I determined the landlord has failed to present sufficient evidence to establish grounds under section 47(1)(d)(iii).

In the circumstances after considering all of the evidence I determined the landlord has failed to present sufficient evidence to establish cause to end the tenancy in accordance with the grounds set out in the Notice to End Tenancy. As a result I order that the Notice to End Tenancy dated March 28, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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: May 16, 2014

Residential Tenancy Branch

