



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

On January 31, 2014, the landlord served on the tenant a 1 month Notice to End Tenancy for Cause (the "Notice"). The landlord served the notice on the tenant by posting it to the door of the rental unit. The tenant could not recall when he received the Notice and filed his application for dispute resolution on February 12, 2014. The Notice alleges the following:

- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- The tenant has caused extraordinary damage to the unit or property;
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after he received written notice to correct; and
- The tenant has failed to comply with an order under the legislation within 30 days after the tenant received the order.

The landlord acknowledged that he had not given the tenant a written notice that he had breached a material term of the tenancy and further acknowledged that the tenant had not been given an order under the Residential Tenancy Act. I advised the landlord at the hearing that the last 2 grounds listed above were not valid and the hearing proceeded to address the first 2 grounds.

The landlord testified that the tenant has lived in the current rental unit since October 2011 and during that time, has caused damage to the countertop surrounding the bathroom sink. He further testified that the tenant has accumulated an excessive amount of garbage which is piled throughout the unit and that there is a pest control problem.

The landlord provided evidence showing that a pest management company was retained to treat the unit on January 15 and 30, 2014 and that they were unable to do so as the unit was not ready for treatment. A third invoice which is undated but which the landlord says represents a treatment on February 12 indicates that some cleaning was done in preparation for treatment, but that more cleaning was required.

Analysis

In order to establish grounds to end the tenancy, the landlord must prove that the tenant has either placed the property at significant risk or that the tenant has caused extraordinary damage to the unit.

I accept that the tenant's failure to adequately prepare the rental unit for pest control has created some risk of continued infestation, but I find that there is insufficient evidence before me to prove that this risk is significant. For this reason, I find that this ground to end tenancy is not supported.

In order to prove that the tenant has caused extraordinary damage to the rental unit, the landlord must show that the condition of the bathroom countertop has markedly deteriorated as a direct result of the tenant's actions. The landlord was unable to provide proof that the countertop surrounding the bathroom sink was in better condition at the start of the tenancy and for this reason, I find insufficient evidence to prove that the tenant has caused extraordinary damage.

I find that the landlord has failed to prove that he has grounds to end the tenancy and I therefore order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

Conclusion

The Notice is set aside.

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 10, 2014

Residential Tenancy Branch

