



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Preliminary Issues

Six minutes into this proceeding the property manager, J.O. disconnected from the hearing. A few minutes later the Landlord's agent, A.F., stated that J.O. had sent her an e-mail to say she had lost cell service and would not be re-joining the proceeding. The hearing continued in J.O.'s absence as the Landlord was represented by two other Agents and their witnesses.

As noted above, the Landlord was represented at the hearing by two Agents, hereinafter referred to as Landlords. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 22, 2014, by the Tenant to obtain an Order to cancel a Notice to End Tenancy issued for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the 1 Month Notice to end tenancy, issued April 17, 2014, be upheld or cancelled?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on July 1, 2006. Rent is payable on the first of each month and began at \$730.00. Rent has subsequently been increased and is currently \$857.36 per month. On June 27, 2006 the Tenant paid \$365.00 as the security deposit.

The Landlords testified that they have been dealing with a problem with their laundry machines which they later determined to be caused by someone turning off the washer and dryer prior to the completion of the cycle. The laundry room is located directly beside the Tenant's rental unit and shares a common wall with the Tenant's unit. The Landlords did not know if the machines can be heard in the Tenant's unit and did not know which rooms in the Tenant's unit share the common wall. They indicated that the machines are not up against the wall, rather they are place a few inches away from the wall.

The Landlords submitted that they had received complaints from tenants that they saw the Tenant, in or around the laundry room, shortly after one or both of the machine cycles were interrupted, prior to the completion of the cycle.

Witness #1 for the Landlord testified that he was inside the laundry room, behind the door, monitoring his laundry to ensure no one turned the machines off. While there, he witnessed the Tenant come inside the room and attempt to turn off the dryer. He stated that she had her left hand on the door handle while reaching for the dryer with her right hand. This incident resulted in a verbal altercation between them, which is documented in his e-mail to the Landlord dated March 14, 2014, as provided in evidence.

Witness # 2 for the Landlord, testified that she was the spouse of Witness # 1. She stated that she saw the Tenant in the hallway shortly after someone had turned off the laundry machines. She indicated that she saw her from down the hallway and provided a physical description in her written complaint of January 27, 2014, as being someone with blond hair and about 5'4" tall.

The Landlords testified that they issued the Tenant a breach letter dated January 8, 2014, and when they received the second complaint against this Tenant they issued her a 1 Month Notice to end tenancy listing the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord argued that they have incurred maintenance charges after several complaints regarding the laundry machines not working properly; only to find out they were simply turned off mid cycle, by someone opening the machines and leaving them open.

The Landlord pointed to the tenancy agreement provided in their evidence, and noted that section 17 includes the material term which the Tenant failed to correct. Specifically section 17 stipulates the required conduct of the Tenant and states:

... the tenant or the tenant's guest must not disturb, harass, or annoy another occupant of the residential property...

The Tenant disputed the Landlords' and their witness' submissions and argued that when she was served the breach letter in January 2014 the Landlord was not able to tell her when this event allegedly occurred. She was later told by the Landlord that the breach letter would be removed from her file as there was not enough proof against her.

The Tenant pointed to the photos provided in her evidence and argued that Witness #1's description that she was reaching for the dryer while holding onto the door was not possible given her height. She argued that she simply cannot reach the dryer door while holding onto the door handle.

The Tenant testified that Witness #2's description of the person she saw in the hallway does not match her description. She stated that she is brunette and has never been blond and she is barely five feet tall not 5'4".

The Tenant denied tampering with the laundry machines and argued that someone has turned off the machines while she was doing laundry as well. She admitted that she often goes into the laundry room to check to see if anyone has laundry going. She stated that she cannot hear the machines in her apartment, which are on the other side of the wall of her kitchen, so she often takes a look in the laundry room to see if they are in use, before carrying her laundry in there.

In closing the Landlords confirmed that they do not have any witnesses who actually saw the Tenant with her hands on the laundry machines to open them. They are considering putting security cameras inside the laundry room to monitor the machines.

The Tenant stated that she understands the seriousness of these matters and that if the Landlord verifies she is causing an interruption to the laundry machine operation in

the future, the record of these events would form part of the Landlord's case should it again come before an arbitrator for consideration.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After careful consideration of the foregoing and the documentary evidence before me, I find that on a balance of probabilities, the Landlord submitted insufficient evidence to prove the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or that she has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I make this finding in part because no one has actually witnessed the tenant tamper with the laundry machines causing the cycle to be interrupted. Rather, the evidence suggests that it was her based on witness testimony that they saw her either lean into the laundry room or be in close proximity of the room. Accordingly, I uphold the Tenant's application, and the 1 Month Notice to end tenancy is hereby cancelled.

Conclusion

I HEREBY CANCEL the 1 Month Notice to end tenancy for cause issued, April 17, 2014, and the Notice is of no force or effect. This tenancy will continue until such time as it is ended in accordance with the Act.

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: June 16, 2014

Residential Tenancy Branch

