



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, FF

Introduction

This is an application filed by the tenant to cancel a notice to end tenancy issued for cause, a request for an order for the landlord to make repairs to the unit, site or property and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the tenant's notice of hearing package, I am satisfied that both parties have been properly served.

At the beginning of the hearing, the tenant objected to the landlord's late evidence stating that it was filed late and should not be considered. The landlord states he was away on vacation for 10 days prior to filing the late evidence. The tenant objects as the application was filed on July 4, 2014 and the landlord had approximately 54 days to respond instead of filing the evidence late. The tenant also states that the evidence is highly prejudicial and required the tenant to quickly react in obtaining evidence to dispute the landlord's claims. The landlord clarified that all of the documentary material was already packaged for another dispute resolution hearing and only required photocopying. I find that the landlord has failed to properly follow the rules of procedure in his submission of documentary evidence as there is no apparent reason prohibiting him for providing this material sooner. I find that the landlord's documentary evidence to be highly prejudicial and shall not be considered for this hearing. As such, I also find that the tenant's late evidence to be highly prejudicial and that the tenant failed to properly follow the rules of procedure in providing evidence for the dispute hearing. The tenant's late documentary evidence shall not be considered for this hearing. The hearing proceeded strictly on the direct testimony of both parties.

The tenant has withdrawn his application for repairs. As such no further action is required for this portion of the application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

Both parties agreed that the landlord served the tenant with a 1 month notice to end tenancy issued for cause dated June 26, 2014 by posting it to the rental unit door on the same date. The notice displays an effective end of tenancy date of July 31, 2014. Both parties confirmed that the notice displays 3 reasons for cause.

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- put the landlord's property at significant risk.

The landlord states that over the past 7-8 months, on one or two occasions per week there is excessive smoke coming from the tenant's rental unit due to cooking. The landlord states that this jeopardizes the health or safety of the landlord as the smoke is making his pregnant wife ill. The landlord states that prior to the tenant moving in he installed a new exhaust fan. The tenant disputes the landlords claim stating that they are not doing anything not outside of normal daily cooking. The tenant states that he has repeated reported the excessive smoke issue with the landlord who has done nothing. The landlord states that he attended to inspect the rental unit and could find nothing wrong. The tenant argues that there was no cooking going on during this time so of course the landlord would find nothing. The landlord had a technician attend to inspect the stove and exhaust fan in July of 2014. The tenant disputes this stating that the person who attended was a handy man who did not even look at the stove or exhaust fan when he was there in July 2014. The tenant also states that the landlord has never properly inspected the stove or fan. The landlord states that the tenants cooking is causing excessive smoke which would likely result in a fire. The landlord clarified that there has been no fire. The landlord also states that the tenant is disturbing other occupants as there is a constant complaint of not enough hot water. The tenant states that the stove, exhaust fan and hot water are outside of their control. The tenant only states that the landlord should have a qualified technician attend to inspect and if necessary either repair or replace these items.

Analysis

I accept the direct evidence of both parties. The onus or burden of proof lies with the party who is making the claim. In this case it is the landlord's responsibility. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The landlord has failed to provide sufficient evidence to satisfy me that there are reasons for cause to end the tenancy. The tenant's application to cancel the notice to end tenancy is granted. The notice dated June 26, 2014 is set aside and the tenancy shall continue.

The tenant is also entitled to recovery of the \$50.00 filing fee. As the tenancy continues, I order that the tenant be allowed to deduct \$50.00 one-time from future rent to recover the filing fee for the next month following receipt of this decision.

Conclusion

The tenant's application is granted. The tenancy shall continue.
The tenant may deduct \$50.00 one-time from the next months rent upon receipt of this decision.

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: September 09, 2014

Residential Tenancy Branch

