



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 33 DEVELOPMENT WORLD CORP
and [tenant name suppressed to protect privacy]

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an Order cancelling the One Month Notice to End Tenancy for Cause issued August 19, 2014 (the "Notice").

The Tenant, her roommate, R.B. and the Landlord appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

In a case where a Tenant has applied to cancel a notice for cause, Residential Tenancy Branch Rules of Procedure require the Landlord to provide their evidence submission first, as the Landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Matters

The Notice indicated an effective date of September 31, 2014. Section 53 of the Act provides for automatic correction of incorrect effective dates, As there are only 30 days in September, the date is changed to October 31, 2014

Further, the Notice indicated an incorrect address for the unit to be vacated; however, the Tenant's Service Address was correctly noted as the rental unit address. Further, the Landlord confirmed that the Tenant's were personally served at the rental unit on August 19, 2014. In the circumstances, I find that the Tenants knew or ought to have known that the address of the unit to be vacated had a typographical error.

As I noted during the hearing, I find the Notice to be valid.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Neither party introduced the tenancy agreement in evidence. In its place I accept the testimony of the Landlord as to the terms of the tenancy. He stated that the tenancy began September 15, 2013 for a one year lease ending September 15, 2014. Monthly rent of \$1,700.00 per month, in addition to a fixed fee of \$270.00 per month for utilities was payable on the first of each and every month.

The reasons cited in the Notice were that:

- that the Tenant is repeatedly late paying rent; and
- the Tenant has put the property at significant risk.

LANDLORDS' EVIDENCE

Dealing first with the allegation of repeated late payment of rent, the Landlord testified as follows:

- the January 1, 2014 payment was returned N.S.F.;
- the February 1, 2014 payment was returned N.S.F.;
- the March 2014 payment was made on March 13, 2014;
- the April 2014 payment was made on April 8, 2014;
- the May 2014 payment was made on May 2, 2014;
- the June 2014 payment was made on June 2, 2014; and
- the July 2014 payment was made on July 2, 2014.

The Landlord testified that the August and September payments were paid on time.

As to the second reason, the Landlord testified that the Tenant installed a stove in the basement of the suite without his knowledge and consent. He stated that he first became concerned about the Tenant's activities when the hydro bill went up \$30.00-

\$50.00 per month and conducted a suite inspection to determine if the Tenant had more occupants or was engaged in illegal activity. During the inspection the Landlord discovered the Tenant had installed a kitchen stove and range in the basement. The Landlord further stated that he believed the work was done by an electrician who was not qualified to do such work.

In terms of the risk created by the installation of the stove plug and stove, the Landlord testified that he was concerned that the Tenants had created a separate suite which is contrary to the zoning bylaws. Additionally, he stated that he was not permitted to have a suite without proper fire protection and wired smoke detectors and that by installing the stove the property insurance on the rental property was nullified.

TENANT'S EVIDENCE

With respect to Landlord's allegation of late payment of rent, the Tenant testified that at the time the tenancy began she had recently gone through a divorce and made a bankruptcy assignment. She said she had difficulty paying her rent on time and that she spoke to the Landlord and he agreed that she could pay when she was paid from her employment. Initially she testified that she did not receive any written notice from the Landlord that he was intending to rely on the tenancy agreement and expect rent on the 1st of the month. Further on in her testimony she confirmed that the Landlord told her in April of 2014 that he expected rent on the 1st of each and every month.

With respect to the Landlords' allegation that she had put the property at significant risk by installing a kitchen stove, she testified that her friend R.B. installed the stove when he moved into the basement and that R.B. is a journeyman electrician. The Tenant confirmed that the stove was installed in November 2013 when R.B. moved into the rental unit with her. She confirmed that she did not speak to the Landlord about installing a stove. She testified that R.B. saw the bare wire in the wall as an electrical hazard and safety risk and to correct the problem he put a plug on the end of the bare wire. She stated that she owned the stove prior to the start of the tenancy and that she brought the stove with her when she moved in. She believed that the bare wire was a fire hazard and that R.B. corrected this problem.

R.B.'s EVIDENCE

R.B. testified that he has been qualified as a journeyman electrician for six years. He confirmed he did not pull a permit to attach the plug to the bare wire nor did he have permission from the Landlord to perform the work. He testified that from his observations, the downstairs had been pre-wired for a suite, which he said was

common practice for homeowners who intend to create an illegal suite after obtaining their final occupancy permit.

R.B. confirmed that upon discovering the bare wire in the wall, he had the option of capping it off, putting on a blank plate or connecting a plug.

R.B. stated that the stove had never been used and that it could therefore not be the cause of the increased utilities.

LANDLORDS' REPLY EVIDENCE

The Landlord stated that he did not agree to the Tenant paying her rent late and that in fact she refused to come to the door when he attended the rental unit to talk to her about the rent. He stated that in April of 2014 he had prepared the "eviction notice", and at that time he warned her that further late payments would result in an eviction.

The Landlord confirmed that neither the Tenant nor R.B. asked him about installing a plug and stove in the basement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

With respect to the issue of the late rental payments, I prefer the evidence of the Landlord and find that the Landlord did not agree to the Tenant paying her rent late and in fact warned the Tenant in April of 2014 that further late payments would result in eviction. I further find that the Tenant was late paying rent in May, June and July of 2014.

Residential Tenancy Policy Guideline 38 Repeated Late Payment of Rent provides that three late payments are the minimum number sufficient to justify a notice under these provisions. The Tenant was late paying rent every month from January to July 2014. Three of those late payments occurred after the April 2014 warning to the Tenant that further late payments would result in eviction.

The Landlord issued the Notice on August 19, 2014. I find that the Landlord acted in a timely manner after the most recent late rent payment and has therefore not waived reliance on this provision.

With respect the Landlord's allegation that the Tenant has put the Landlord's property at significant risk, I find that the Tenant installed a stove plug and kitchen stove without the Landlord's knowledge or consent, and that in doing so, the Tenant compromised the insurability of the home thereby putting it at significant risk. R.B. confirmed that when he discovered the bare wire in the wall, he could have capped the wire off, or installed a blank plate but that in any case he did not have permission from the Landlord to install a kitchen stove/range plug.

Consequently, I find that the Landlord has established cause to end the Tenancy and I dismiss the Tenant's application to cancel the Notice. The tenancy will end in accordance with the corrected Notice on October 31, 2014.

Conclusion

The Tenant's application to cancel the Notice is denied.

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: October 6, 2014

Residential Tenancy Branch

