



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice").

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The undisputed evidence was this tenancy began on August 8, 2014, monthly rent is \$850, and the tenant paid a security deposit of \$425. The rental unit was in the lower portion of a home in which the landlord lives in the upper level.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated September 25, 2014, was served on the tenant on that date, according to the landlord, and listed an effective end of tenancy on November 1, 2014.

The causes listed on the Notice alleged that the tenant is repeatedly late in paying rent, and in this case, the landlord wrote that rent was late in September. The landlord also marked another box on the form alleging that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; however, the landlord altered the Notice form and crossed out the word "illegal."

In support of their Notice, the landlord submitted that the tenant paid rent late in September, but that the rent was paid shortly thereafter and was not an important matter in this dispute anyway. As to the other cause that was listed, the landlord confirmed that the tenant was not engaging in illegal activity, which is why she marked through the word, but alleged that the tenant was impacting her quiet enjoyment, as the two shared a home.

The landlord confirmed that the rent has been paid up-to-date and there have been no further late rent payments.

Tenant's response-

The tenant submitted that there have been no problems since the Notice was issued.

Analysis

The onus is on the landlord to substantiate that she had sufficient cause on the day the Notice was issued to end this tenancy.

Section 47 (1) of the Residential Tenancy Act allows a landlord to serve to the tenant a 1 Month Notice to end the tenancy if certain causes listed in this section apply. One of the causes listed alleged that the tenant is repeatedly late in paying rent. Residential Tenancy Branch Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice under these provisions. In the case before me, the tenant allegedly made one late payment; however, the landlord confirmed that she was not interested in ending the tenancy for this reason. I therefore find the landlord has not supported this alleged cause listed on the Notice.

As to the other alleged cause, the landlord altered the document when she struck out the word “illegal” on the listed cause, which I find invalidates the Notice as there is no such cause sufficient to end a tenancy listed under section 47(1).

Due to the above, I therefore find that the landlord has submitted insufficient evidence to substantiate her Notice.

As a result, I find the landlord’s 1 Month Notice to End Tenancy for Cause dated and issued on September 25, 2014, for an effective move out date of November 1, 2014, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Conclusion

I grant the tenant’s application seeking cancellation of the landlord’s 1 Month Notice, and the Notice is hereby cancelled with the effect that the tenancy will continue until 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: November 21, 2014

Residential Tenancy Branch

