



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy. The tenant originally filed the application on August 14, 2014 seeking an order cancelling a notice to end tenancy for cause, and filed an amendment on September 8, 2014 seeking more time to make an application to cancel a notice to end tenancy and for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The tenant was also assisted by an advocate. The tenant provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlord, however the landlord has not provided any evidence. The parties were given the opportunity to cross examine each other on the evidence and testimony given, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the parties agreed that the tenant has filed an application for dispute resolution disputing both notices to end tenancy within the time required under the *Residential Tenancy Act*, and the tenant does not require more time to make the application. Therefore, that portion of the tenant's application is dismissed.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the notice to end tenancy for cause be cancelled?
- Should the notice to end tenancy for unpaid rent or utilities be cancelled?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2008 and the tenant still resides in the rental unit. Rent in the amount of \$900.00 per month is payable in advance on the 1st day of each month. No security deposit or pet damage deposit was collected from the tenant. A written tenancy agreement exists, but a copy has not been provided, and the landlord testified that she cannot locate her copy. She also testified that a tenancy agreement exists with the co-tenant in the rental unit,

however does not know what the agreement states with respect to the amount of rent payable.

The landlord has received evidence from the tenant, but it consists of pages 1 and 6 of the tenancy agreement, and no copies of pages 2, 3, 4 or 5. The agreement names one tenant and one landlord on page 1, is signed by a landlord dated September 1, 2008, and signed and dated by the tenant on September 10, 2008. However, the copy does not indicate the amount of rent payable. The landlord testified that there is also a co-tenant who also has a tenancy agreement, but there has never been any tenancy agreement showing that each tenant is to pay half of the rent. The copy provided for this hearing also contains pages 1 and 6 only.

The landlord further testified that the tenants both paid rent for the month of July, 2014, however the tenants failed to pay rent when it was due for August, 2014. The tenant paid \$300.00 on August 15, 2014; \$150.00 on August 21, 2014 and \$450.00 on August 29, 2014. No rent for September has been received by the landlord.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 4, 2014. The tenant has provided both copies of the 2 page notice for this hearing. The notice is dated September 4, 2014 and contains an expected date of vacancy of September 17, 2014, and is issued to the tenant and the co-tenant. It states that the tenants failed to pay rent in the amount of \$900.00 that was due on September 1, 2014.

The landlord also testified that the tenant has collected numerous items that are in the yard of the rental unit, such as gas cans and junk and a person has to fight their way in and out due to the amount of items collected. The landlord has told the tenant many times to clean it up, and was last on the rental property on September 4, 2014. The yard was not cleaned up at that time. It's also difficult to get through the doors. The landlord issued a 1 Month Notice to End Tenancy for Cause on August 6, 2014 and served the tenant personally that day. The tenant has provided a copy of both pages of the 2-page notice and it is dated August 6, 2014 and contains an expected date of vacancy of September 30, 2014. The reasons for issuing the notice state:

- Tenant or a person permitted on the property by 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 tenant testified that he did pay rent, and that he was only late paying rent once. The sum of \$450.00 was paid by direct deposit to the landlord's bank account for September, 2014 which is the way rent has been paid for 6 years. The tenant has provided a copy of receipt for that amount by the financial institution dated August 29, 2014. The tenant testified that the balance of the rent is owed by the co-tenant. The

tenant also stated that the tenancy agreement names the tenant only as a tenant, and does not name the co-tenant.

The tenant also testified that more than half of the mess belongs to the co-tenant, and the tenant disagrees that he should have to move out. He further stated that there is no fire hazard and everything he owns is respectfully clean. A trailer, a boat and some of the fuel cans belong to the tenant, and all of the co-tenant's belongings are beside his camper; he has a lot of stuff but it's not a fire hazard. The tenant testified that the house is clean, and the tenant rented a bin twice and got rid of a lot of stuff that the co-tenant brought home from the junk yard. The co-tenant has been arrested for assaulting the tenant and was incarcerated. The tenant hasn't seen him since and a "no contact" order is in place. He was last in the rental unit in July or August. The tenant has been sick and not able to do more on the property; his nose was reconstructed. Some of the mess belongs to the tenant and he has been working on it.

The tenant also testified that the previous co-tenant is very violent, and the tenant wants an opportunity of about 2 weeks to find another co-tenant and will finish cleaning. He submits that the \$450.0 he paid on August 29, 2014 is his share for September's rent.

The tenant's advocate submitted that the behavior was that of the co-tenant, who is no longer on the property. It was really a landlord issue because the co-tenant was already there.

The landlord submitted that both tenants paid rent for July and then only one for August. The tenant paid \$300.00 on August 15, 2014; then \$150.00 on August 21, 2014; then \$450.00 on August 29, 2014. That equates to full rent paid for August, but \$900.00 is still owed for September.

Analysis

I have reviewed the evidence provided by the tenant, and the tenancy agreement signed in September, 2008 clearly has only one tenant named, but does not indicate the amount of rent payable. The parties agree that the co-tenant was already a tenant when the tenant moved in, and there is no evidence of what that tenancy agreement states as to the amount of rent payable or how many tenants are named. The landlord testified that there has never been a tenancy agreement stating that each tenant pays half the rent, and the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to both tenants. However, the landlord has not provided any evidence of the amount payable either individually or jointly, and the tenant testified that each tenant is responsible for half of the rent. It occurs to me that if a tenant already resided in the rental unit and had a signed tenancy agreement, and then the landlord enters into another agreement with another tenant for the same rental unit, both for the full amount of rent, the landlord would be in position to get the full amount of \$900.00 from each of the tenants. That was not the case, and I find that on the basis of the fact that both tenants had separate tenancy agreements, the landlord has failed to establish that this

tenant was required to pay the entire amount. The notice to end tenancy is therefore cancelled.

With respect to the 1 Month Notice to End Tenancy for Cause, where a tenant disputes a notice, the onus is on the landlord to establish that the landlord had cause to issue it. The landlord has provided no evidence of a fire hazard and the tenant disputes that. I further find that the landlord has failed to establish that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or put the landlord's property at significant risk. The notice is hereby cancelled.

Conclusion

For the reasons set out above, the tenant's application for more time to make an application to dispute a notice to end tenancy is hereby dismissed.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby cancelled.

The 1 Month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues.

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 08, 2014

Residential Tenancy Branch

