



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Treaty Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice") and an order requiring the landlord to make emergency repairs to the rental unit.

The tenant and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, 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.

Preliminary matter-I have determined that the portion of the tenant's application dealing with a request for an order requiring the landlord to make emergency repairs is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application seeking cancellation of a Notice to End Tenancy for Cause.

Preliminary matter#2- At the outset of the hearing, the landlord submitted that he delivered the documentary evidence to the tenant by attaching the documents to the door. The tenant denied receiving the documents. I made the decision to proceed with the hearing, and have accepted the landlord's evidence, as I find his testimony regarding service of the documents credible, and also due to the fact that the tenant already was in possession of a large part of the evidence. In particular the landlord's evidence included a copy of the written tenancy agreement and the Notice supplied previously by the tenant. The only written piece of evidence the tenant would not have had previously was an email transmission sent to the landlord by a leasing agent, and I allowed the landlord to read from this email.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

The undisputed evidence shows that this tenancy began on April 15, 2013, monthly rent is \$900 and the tenant paid a security deposit of \$450.

The rental unit is located in a multi-unit building.

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 18, 2014, was served via personal delivery on that date, according to the landlord, listing an effective end of tenancy of October 31, 2014.

The tenant disputed that she received the Notice that day, and as the landlord's agent who was said to have served the Notice was not present, I accept that the tenant filed her application within the required time as allowed under the Act.

The cause as listed on the Notice alleged that the tenant has knowingly given false information to prospective tenants or a purchaser of the rental unit or property.

In support of their Notice, the landlord submitted that the tenant, on September 17, 2014, had become agitated after having locked her keys inside her rental unit. Their leasing agent came around to show prospective tenants other rental units in the building that day, at which time the tenant became aggressive and started shouting at the leasing agent and yelling to the prospective tenants that the building was infested with bugs and rodents, among other things. The landlord submitted further that the tenant's aggressive behaviour and allegations about the building cost the landlord at least 4 tenants, as they left the premises after hearing the tenant.

The landlord submitted further that the tenant also the year before, placed signs on her window, with allegations about the landlord.

In response, the tenant agreed that she had made statements to prospective tenants about the infestation, but that she believed people should make an informed decision and that nothing she said was untrue.

Analysis

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

After considering all of the written and oral evidence submitted for and at this hearing, I find that the landlord has provided insufficient evidence to prove that the tenant has knowingly given false information to prospective tenants or a purchaser of the rental unit or property.

While I do not condone the conduct of the tenant in speaking or shouting to prospective tenants about an infestation, I find the cause listed by the landlord does not speak to this conduct, such as it would had the landlord marked the box on the Notice dealing with jeopardizing a lawful right of the landlord. I do not find that the landlord has sufficiently established that the tenant believed the information she imparted was

false. The tenant, in her application, stated that her actions occurred right after an exterminator had been set to attend the residential property, further leading me to conclude that the tenant had a reasonable belief that the information was true. I would further expect the landlord to provide sufficient evidence that there was not a bug or rodent infestation in the residential property to support that the information was false, or that the tenant would believe it to be false.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the cause listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated and issued on September 18, 2014, for an effective move out date of October 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*.

The portion of the tenant's application seeking an order for emergency repairs is dismissed with leave to reapply.

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 17, 2014

Residential Tenancy Branch

