



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a one month notice to end tenancy for cause and for an order directing the landlord to comply with the *Act*. The tenant also applied for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing, the tenant referred to a prior hearing that had taken place on November 06, 2014. In a decision dated the same day, the arbitrator ordered the landlord to provide the tenant with the exclusive use of the driveway and granted the tenant liberty to make an application for compensation in the event that the landlord did not comply with the order. The tenant made this application on November 06, 2014 and at that time it was too early to apply for compensation as the landlord had just been ordered to provide exclusive use of the driveway to the tenant. The tenant subsequently filed evidence requesting compensation but did not amend her application. Since the landlord was not appropriately notified of the monetary claim against him, I dismiss this portion of the tenant's application for compensation, with liberty to apply.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began in February 2012. The monthly rent is \$1,250.00. Neither party filed a tenancy agreement into evidence. The rental unit is located in a two level home. The tenant occupies the main floor of the home and the upper floor is rented out separately.

The landlord stated that he has received numerous complaints from the present and past occupants of the upper level, regarding the smoking of marijuana by the tenant inside the rental unit. The tenant agreed that she did smoke inside the rental unit once at the very start of the tenancy, but stopped doing so after the landlord gave her a verbal warning. The landlord stated that based on the continued complaints from the tenant upstairs, he believed that the tenant continued to smoke inside the rental unit and therefore he continued to give the tenant multiple verbal warnings.

The tenant agreed that she smoked marijuana but stated that she did so outside the rental unit. The tenant also stated that every time she received a warning from the landlord she invited him to inspect the inside of the rental unit for signs of smoking. The landlord did not do so. The landlord stated the reason for not inspecting the unit was that he was too busy and that he did not want to bother the tenant.

The tenant filed a statement from the person who cleans her rental unit. In this unsigned statement the cleaner states that she has been cleaning the rental unit since the start of the tenancy and has not found signs of smoking, inside the rental unit.

The landlord filed a note of complaint from the upstairs tenant. The note is dated November 17, 2014 which is well after the issue date of the notice to end tenancy that is the subject of this dispute. The landlord has also filed three undated letters. These letters are from a previous tenant and the occupants of the houses adjacent to the rental unit. The letters complain about the use of marijuana by the tenant and how this activity adversely affects their health and that of their families.

On October 30, 2014, the landlord served the tenant with a one month notice to end tenancy for cause. The notice to end tenancy alleges that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or landlord and 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.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or landlord and 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.

Based on all the evidence before me, I find that the tenant received a verbal warning regarding smoking inside the rental unit at the beginning of the tenancy. The landlord testified that the tenant continued to smoke inside the rental unit and the tenant denied this.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the parties contradicted each other's testimony with regard to smoking inside the rental unit, which was one of the reasons for the notice to end tenancy. The evidence provided by the landlord consisted of one dated witness letter and three undated witness letters. The dated letter was written well after the notice to end tenancy was served. I also take into consideration that the tenant offered the landlord the opportunity to inspect the unit on a regular basis to check for signs of smoking inside the unit, but the landlord chose not to do so. . Based on the testimony of the tenant, I find that her testimony regarding not smoking inside the rental unit, is credible and therefore I find that the landlord has not proven that the tenant smokes inside the rental unit.

Since the tenant agreed that she smokes outside the rental unit, I find that it is possible that the smoking activity is close enough to the home to affect the upstairs occupant. The tenant accepted the fact that smoking just outside the rental unit could potentially result in smoke entering the upstairs unit and has agreed to smoke at the back property line which is at a fair distance from the home.

I accept that the tenant smokes just outside the rental unit which results in discomfort to the upstairs occupants, but I find that by smoking outside, the tenant has not breached the tenancy agreement and I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated October 30, 2014. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving the other occupants of the residential unit, reason to complain. I find it timely to put the tenant on notice that, if such complaints of smoke entering the upstairs unit were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an arbitrator, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenant may make a onetime deduction of \$50.00 off a future rent towards the recovery of the filing fee.

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: December 10, 2014

Residential Tenancy Branch

