



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Entral Park Citizen Society c/o First Secure Residential (Agent)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, SS, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order substituted service - Section 71; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord states that they do not need an order for substituted service. The Tenant states that they have received all the documents and are prepared to proceed. The Tenant consents to amend the notice to end tenancy to indicate the date of issuance as October 24, 2014

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on October 1, 2010. On October 24, 2014 the Tenant was given a one month notice to end tenancy for cause (the "Notice"). The reasons for the Notice are:

- the tenant or a person permitted on the residential property by the tenant has
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk; and
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The Landlord states that the Tenant breached a material term of the tenancy agreement and points to section 17 of the tenancy agreement that provides, inter alia, that the Tenant must maintain reasonable health, cleanliness and sanitary standards. The Landlord states that reasonable cleanliness of a unit is vital to the tenancy as otherwise the unit would become a fire or health hazard.

The Landlord states that the Tenant's unit has been found cluttered on an ongoing basis throughout the tenancy and that the Tenant has been given multiple notices to clean her unit. The Landlord states that the Tenant has cleaned the unit after the notices. The Landlord states that in the year proceeding the issuance of the Notice the Tenant's unit was found to be unacceptable on October 9 and 24, 2014.

The Landlord states that photos taken of the Tenant's unit on October 9, 2014 show the state of the unit as a health or fire hazard. The Landlord states that these photos were taken while the Tenant was out of the unit and without notice given to the Tenant of the entry. The Landlord states that the unit was entered to ensure that the Tenant was safely in her unit as the key system did not indicate this safety on this date. The Landlord states that the photos were taken while in the unit.

The Landlord states that the Tenant was given notice of an entry on October 24, 2014 for the purpose of an inspection of the building fire alarm system by the contractor who provided that system. On this date the contractor refused to enter the unit as the doorway was cluttered. The Landlord states that they moved the clutter and the contractor entered the unit. The Landlord states that no fire or health officials have inspected the unit and that they have determined the level of danger by their own observations and that of the contractor who the Landlord states mentioned that the unit was a fire hazard. No letter from this contractor was provided. The Landlord suggests that the Tenant is a hoarder.

The Tenant states that all the items in her unit are usual household goods and that there are perhaps more than the usual household would have but that none of the goods are paper, dangerous materials, or flammable. The Tenant states that the unit is sanitary and that there is no open food or waste. The Tenant states that on October 24, 2014 the door could be opened easily but that it was partially obstructed by items that were set by the door to take out for donation. The Tenant states that the unit was reasonably clean on October 24, 2014 and provide photos of the unit taken after the contractor was in the unit.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

Although the Landlord gave evidence that problems were encountered with the Tenant for years prior to the service of the Notice, as no action was taken by the Landlord in relation to the past problems, I find that the Landlord has not substantiated that events over a year prior to the tenancy are significant enough to support the validity of the Notice.

The Landlord has provided photo evidence taken October 9, 2014 of the state of the Tenant's unit. These photos were obtained through entering the unit for the purpose of determining the Tenant's lock safety. The Landlord did not obtain this evidence through either a duly notified inspection or through permission obtained from the Tenant for such an inspection. The collection of the photos is clearly a breach of the Tenant's right to privacy and I am loathe to consider evidence that has been obtained through such a breach. Even if I were to consider this evidence however, given that there is no evidence from either a health or fire inspector indicating any health or safety issues, I would find that the photos are insufficient evidence of an unsafe unit as they do not show dirt, grime, refuse, open food, flammable materials or any other dangerous goods, and they do not include photos of the kitchen or bathroom.

Given the Tenant's photos of the unit on October 24, 2014 which I find show a reasonable state and based on the Landlord's evidence that the unit was easily entered on that date after the movement of some articles, I find that the Landlord has provided insufficient evidence to substantiate that the Tenant left her unit in such a state of uncleanness that it caused any risk or jeopardy to anybody or anything.

As the other reason contained in the Notice is in relation to a breach of the term in the tenancy agreement in relation to the cleanliness of the unit and while this may or may not be a material term of the tenancy agreement, as the term of the tenancy agreement is essentially the same provision contained in the Act in relation to cleanliness of the unit and as that section has already been found not to have been breached, I find that the Landlord has not shown a breach of a material term of the tenancy agreement.

For these reasons I find that the Notice is not valid and that Tenant is entitled to a cancellation of the Notice. The Landlord's application is dismissed and the Tenant is entitled to recovery of the \$50.00 filing fee. I order the Tenant to reduce future rent payable by this amount.

Conclusion

The Notice is cancelled and of no effect. 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: December 05, 2014

Residential Tenancy Branch

