



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a one month Notice to End Tenancy issued for cause.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

Both the Tenant and the Landlord submitted their evidence late. Under the rules of procedure the Tenant was required to provide his evidence at the time of filing his Application, or, no later than 14 days before the hearing. However, the Tenant filed his Application on January 21, 2015, and the hearing was scheduled for February 2, 2015, which did not allow the Tenant the 14 days to provide his evidence. His evidence was filed on January 28, 2015. The Landlord also provided evidence on January 28, 2015 as well. As both parties had submitted their evidence late and neither requested an adjournment for more time to review the other parties' evidence, I determined the evidence should be considered and allowed all the evidence submitted.

The Tenant did not submit a copy of the Notice to End Tenancy he wished to cancel, despite being directed to on the Application form for his dispute. As the Tenant had no quick access to a fax machine the Landlord agreed to send a copy of the two pages in the Notice to End tenancy to the Arbitrator which arrived during the hearing.

I reviewed the contents of the Notice to End Tenancy with the Tenant to ensure that the copy faxed from the Landlord was the same as the copy that was served on the Tenant. The Tenant confirmed the contents of each of the boxes on the Notice and confirmed the causes in the Notice he was served were the same as that faxed to me. There was a one digit error in the address of the rental unit, although the Tenant acknowledged he knew the Notice was meant for him and his rental unit. I have amended the Application of the Tenant and the Notice from the Landlord to include the correct address of the rental unit, as shown on the cover page for this Decision.

Issue(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

On or about January 20, 2015, the Landlord served the Tenant with a one month Notice to End Tenancy for cause, indicating the Tenant or a person permitted on the property by the Tenant, 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, or that the Tenant has engaged in an illegal activity that has or is likely to damage the Landlord's property, and, the Tenant has caused extraordinary damage to the rental unit or property, or the Tenant has not done required repairs of damage to the rental unit (the "Notice").

The Tenant filed his Application to cancel the Notice on January 21, 2015.

Under rule of procedure 11.1, the Landlord provided testimony and evidence first on why the Notice was issued.

The Agents for the Landlord testified that on January 15, 2015, the Tenant had a fire on top of the stove in the rental unit. There was a toaster on top of the stove which caught fire when the Tenant turned a burner on under the toaster and then the Tenant went into the shower. The fire alarms went off and the fire department attended the rental unit.

The Landlord filed in evidence a copy of the fire department's "responsibility notice", which indicates they attended the rental unit and when they left they informed the Tenant and the Landlord of the following, "Toaster fire damage to stove top. Have repair person fix stove before using." [Reproduced as written.] This document is dated January 15, 2015, and indicates a time of 10:48.

The Agents for the Landlord testified that they felt the Tenant was negligent in leaving the stove turned on while it was unattended.

The Agents also testified that in June of 2013, during a routine inspection of the rental unit, the Agents found smoke damage on the ceiling of the master bedroom of the rental unit. One of the Agents testified that she was told a few stories about this incident, that it was a fire caused by a candle, or that it was a fire in the mattress in the bedroom. The Agent testified that the Tenant was informed he would have to repair the damage caused which was smoke on the ceiling of the bedroom. The Agent testified that the Tenant had only repainted a portion of the ceiling. The Agents further testified that there are smoke marks on the exterior wall of the rental unit coming out of the top of the master bedroom window.

The Agents testified that they were concerned for the safety of the Tenant and the other renters in the building, and for the safety of the building. The Agents were unsure of what caused the first fire in June of 2013, but the latest incident has them concerned for the safety of the Tenant and the other occupants.

The Agents testified that the stove had been repaired and was working again, although it was still damaged by the fire.

In support of cancelling the Notice, the Tenant testified that on January 15, 2015, he spilled some soup on himself and he was going to have a shower to clean himself up. The Tenant turned on one of the elements on the stove to boil some water. He then went to take a shower to wash the soup off himself. He testified he turned the wrong element on, as this was a burner that the toaster was sitting on. He testified that he was only in the shower for approximately one minute and then he heard the fire alarm go off.

The Tenant testified he put the fire out himself and there was minimal damage to the stove and that it was now working. He apologised about the toaster catching fire and offered to pay for the damage, although he testified he has not been given any repair bill. The Tenant explained that he should not have had a toaster on the stove and it was there because he did not have enough room for it on the counter top.

The Tenant denied there had been a fire in the rental unit in June of 2013. He testified that there was just soot on the ceiling of the master bedroom from the smoke from a candle. He denied there was smoke on the exterior wall above the window for the rental unit.

The Tenant further testified that he should not have turned on the wrong element of the stove and left it unattended and testified it would not happen again.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Notice is valid and should not be cancelled. Therefore, I dismiss the Tenant's Application without leave to reapply.

I find that by turning on a burner on the stove and then leaving it unattended the Tenant caused a fire on the stove top in the rental unit. I find the Tenant was negligent in turning on the wrong burner of the stove and then leaving the stove unattended.

Although the fire was quickly contained and the damage was relatively minor, I find that the actions of the Tenant seriously jeopardized the safety and physical well-being of other occupants in the rental building and put the Landlord's property at significant risk.

It appears the Tenant and other occupants were lucky this incident did not become much more harmful. Nevertheless, I am not able to find the Notice is invalid, nor am I able to find the Notice should be cancelled. This was a dangerous incident and the Tenant seriously jeopardized the health and safety of the other occupants in the building and put the property of the Landlord at significant risk.

As I have found the Notice was valid on two causes, I do not need to address the other causes listed in the Notice.

This tenancy will end under the Notice and the Tenant and all occupants in the rental unit must vacate the rental unit at 1:00 p.m. on February 28, 2015, being the effective date of the Notice.

It was explained to the parties that the Tenant has until the end of the tenancy at 1:00 p.m. on February 28, 2015, to make any repairs to the damage in the rental unit he may have caused. If the Tenant fails to make repairs in accordance with section 37 of the Act, the Landlord may file an Application for the costs of repairs and any other claims they may be entitled to.

Conclusion

I find the Tenant was negligent and caused a fire in the rental unit. The Tenant has insufficient evidence to prove the Notice was not valid or should be cancelled. I find the

Notice was validly given and the Landlord has sufficient evidence to prove they had cause to issue the Notice and end the tenancy.

The tenancy will end in accordance with the effective date in the Notice to End Tenancy, at 1:00 p.m. on February 28, 2015.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 02, 2015

Residential Tenancy Branch

