



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Realty Executives Eco World
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: RR, CNC, MNDC, FF
For the landlord: OPC, OPB, FF

Introduction

This hearing was convened as a result of the cross applications of the parties 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”), an order requiring the landlord to make repairs to the rental unit, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss under the Act, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to alleged cause and an alleged breach of a material term of the tenancy agreement, and for recovery of the filing fee paid for this application.

The tenant, her legal counsel, and the landlord’s representatives attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me, and respond to the other’s evidence.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence.

I have reviewed the oral and written evidence of the parties 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 repairs, an order allowing a reduction in rent, and for monetary compensation are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, 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 to cancel a notice to end tenancy for cause and breach of a material term and the landlord's request for an order of possession for the rental unit.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice and to recovery of the filing fee paid for this application?

Is the landlord entitled to an order of possession for the rental unit and to recovery of the filing fee paid for this application?

Background and Evidence

This tenancy began on May 1, 2013, monthly rent is \$3000, and the tenant paid a security deposit and pet damage deposit of \$1500 each.

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 landlord submitted a Notice, dated December 19, 2014, and said it was delivered by registered mail on that date, listing an effective end of tenancy on January 31, 2015.

The cause listed on the Notice as the reason for which the landlord is seeking to end this tenancy is that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord's additional relevant documentary evidence included a written tenancy agreement, including an addendum, and a copy of a letter from their insurance agent.

In support of their Notice, the landlord submitted that the tenant was required to purchase tenant's insurance, as per the addendum, and has failed to do so. The landlord submitted further that due to the tenant's failure to purchase the tenant insurance, the owner of the residential property would not be able to obtain homeowner's insurance.

The landlord argued that the term regarding insurance was a material term as it was in the written tenancy agreement.

Tenant's response-

The tenant's legal counsel submitted that the tenant was not required to carry tenant insurance, as per the term in the addendum to the written tenancy agreement, and that the term at any rate was not a material term.

Analysis

Where a Notice to End Tenancy is disputed, the landlord had the burden to prove that the tenancy should end for the reasons indicated on the Notice, which in this case, is that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this case, the term relied upon by the landlord to argue that the tenant is required to purchase tenant insurance states that the tenant is “responsible” to purchase their own insurance for their own personal liability and personal property. I find the term “responsible” is not the equivalent to being “required”; rather, I find the term to be optional and informative to the tenant that her contents and personal property would not be covered by the homeowner’s policy in the case of an insurable event. I therefore find the tenant was not required to purchase tenant insurance.

Residential Tenancy Branch Policy Guideline 8 states that a material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy and does not become material due to its inclusion in the written tenancy agreement. The landlord failed to demonstrate that when the tenancy agreement was being negotiated, the tenant understood that this term was material. I also relied upon the fact that the tenancy began on May 1, 2013, and the landlord failed to question whether or not the tenant carried her own insurance until the time the Notice was issued in December 2014.

Due to the above, I find that the landlord did not substantiate that the term in question was a material term or that the tenant violated the term.

As a result, I find the landlord’s 1 Month Notice to End Tenancy for Cause, date and issued December 19, 2014, for an effective move out date of January 31, 2015, is not valid and 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*.

Landlord’s application-

As I have cancelled the Notice, I dismiss the landlord’s application seeking an order of possession for the rental unit based upon that Notice.

Tenant’s application-

I grant the portion of the tenant’s application seeking cancellation of the Notice.

As the tenant was successful with her application, I award her recovery of her filing fee of \$50 paid for this application. The tenant is directed to deduct \$50 from her next, or a

future month's rent payment, in satisfaction of her monetary award, informing the landlord when she is making this deduction.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenant's application seeking cancellation of the Notice is granted as I have cancelled the Notice and granted her recovery of her filing fee, pursuant to section 72 of the Act.

The portion of the tenant's application not dealing specifically with her request to cancel the Notice 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: February 3, 2015

Residential Tenancy Branch

