



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on June 24, 2015. The Tenant said the service was late because her application did not have her telephone number on it so the Residential Tenancy Branch was unable to contact her when the Hearing Package was ready. The Landlord said they did receive the package and did respond to it with their evidence package. I accept the Tenant’s late service of the Hearing package and I accept the Landlord’s evidence package have both been served in an acceptable manner. The hearing proceeded with both parties in attendance and all parties were given the opportunity to give affirmed testimony.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on August 3, 2010 as a one year fixed term tenancy and then continued on a month to month basis. Rent is \$660.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$325.00 on July 17, 2010.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated May 29, 2015. He served the Notice on May 29, 2015 by posting it on the door and putting it in the Tenant’s mail box. The Effective Vacancy date on the Notice is June 30, 2015. The Tenant is living in the unit and the Landlord said they want to end the tenancy.

The Landlord continued to say that the reasons on the 1 Month Notice to End Tenancy are that the Tenant has breached a material term of the tenancy agreement and she

has not corrected the breach in a reasonable time period. As well the Landlord said the Tenant has cause extraordinary damage to the unit, site or property. The Landlord continued to say the Tenant is smoking in the unit which is not allowed in the building and this is causing damage to the unit. As well the Landlord said the Tenant has breached clause A of the tenancy agreement which states tenants are not permitted to do anything that will annoy other tenants including making loud noises or disturbances. The Landlord said they have issued 5 warning letters to the Tenant; 3 letters about smoking in the unit and 2 letters about the Tenant making noise and disturbing other tenants. The Landlord said they taped the warning letter to the Tenant's door, put it through the door and put a copy of the letter in the Tenant's mail box. As well the Landlord said they have submitted 6 complaint letters from other tenants about the Tenant. The complaint letters were 2 about the Tenant smoking in the building and 4 about the Tenant causing noise and disturbing other tenants. One of the letters was a tenant giving their one month notice to move out because the Tenant has disturbed them by knocking on their door in the middle of the night. The letter says the Tenant knocked on their door and was drunk and could not find her keys. The letter continues to identify the Tenant by her apartment number and the letter said the reason they are moving is because of the Tenant disturbing them on number of occasions.

The Landlord continued to say that on January 25, 2015 he was called out to the rental complex because the Tenant was disturbing other tenants. The Landlord said when he arrived the Tenant was drunk, defecating in the hall way and was unruly, so he called the Police. The following day the Landlord's agent issued a warning letter to the Tenant to correct her behaviour. The Landlord said they have tried to work with the Tenant but she has not corrected the behaviour that is disturbing the other tenants and the Landlord. The Landlord said they want to end the tenancy.

The Tenant said the smoking complaints are not valid because the Landlord knew she was a smoker at the start of the tenancy and there is no clause restricting smoking in the tenancy agreement. The Tenant said the Landlord has no grounds to evict her because of her smoking in the rental unit. The Landlord said the rules about smoking are posted in the reader board in the common areas of the complex. The Tenant said she has never seen any rules about no smoking in the rental complex.

Further the Tenant said the noise issues cannot be attributed solely to her as the building is very noisy and one of the complaint letters (item page 13) is about the previous tenant as it refers to him. The Tenant said the previous tenant was a male. The Tenant continued to say that many of the complaint about her were times when she was at work and therefore not in the rent unit. The Tenant did not provide any evidence to support this.

With regard to the warning letters the Tenant said she only received the April 24, 2015 letter about smoking. She said she phoned the Landlord and left a message on the answering machine and the Landlord did not phone her back. The Landlord's property manager said the Tenant phone her and they had a conversation about the April 24, 2015 warning letter but there was no message left on the machine. The Landlord said

this is another example of the Tenant saying whatever she wants and in this case it is not true. The Landlord said the Tenant is not telling the truth about not receiving the warning letter as the letters were delivered to 3 locations and the delivery was witnessed by the Landlord's property manager and the owner of the rental complex. The Landlord said the Tenant is not telling the truth.

The Tenant said she is not lying but the Landlord is not telling the truth about many things in the hearing and one is the January 25, 2015 incident because it never happened. The Tenant did not have any corroborative evidence to support her position that the incident on January 25, 2015 did not happen. The Landlord and the Landlord's property manager said the incident happened as the Landlord described it and they followed up with a warning letter to the Tenant on January 26, 2015.

The Tenant said in closing that there is no smoking restrictions in the tenancy agreement, other tenants smoke, the April complaint is about the previous tenant, she did not receive 4 of the warning letter and she has had a good tenancy for over 4 years. The Tenant said the Landlord is not telling the truth and the Notice to End Tenancy should be cancelled.

The Landlord said in closing they try to work with their tenants and in this situation the Tenant is not responding to the warning letters and verbal request that they have made to the Tenant not to smoke in the unit and to stop disturb the other tenants. The Landlords said they feel the tenancy is not working and the Landlord wants to end the tenancy.

Analysis

It appears from the testimony at the hearing that communications between the Landlord and the Tenant has broken down. There was contradictory testimony provided by both the Tenant and the Landlord regarding the facts of the situation. The Landlord said they have issued 5 warning letters because of complaints by other tenants and the Landlord has submitted the complaint letters or notes. The Landlord said the warning letters were delivered by posting them on the Tenant's door, putting the letter through the door and in the Tenant's mail box. The Tenant said she has not received 4 of the five warning letters. On the balance of probabilities I find the Landlord's testimony is more creditable as the Landlord has a witness that testified the warning letters were delivered in all three ways the Landlord described and the Landlord has submitted the warning letters and the complaint letters from other tenants which necessitated the warning letters. Consequently I accept the Landlord testimony that the Tenant was issued the warning letters. As a result I also accept the Landlord's testimony about the incident on January 25, 2015 which was followed up by a warning letter on January 26, 2015 that

indicates the Tenant's behaviour is not acceptable. The Landlord said the Tenant was drunk, disorderly and defecating in the hall of the rental complex. This behaviour is a serious breach of clause A of the tenancy agreement. A material term of a tenancy agreement is a term that is essential to the tenancy and in this case the clause outlining the behaviour that is acceptable in the rental complex is Clause A and I find it is a material term of the tenancy. Consequently I find that the Tenant has breached a material term of the tenancy and has not provided corroborative evidence to support her claims to cancel the Notice to End Tenancy. Consequently the Tenant has not established grounds to have the 1 Month Notice to End Tenancy dated May 29, 2015 cancelled. I dismiss the Tenant's application on the grounds that I find the Tenant did breach a material term clause A of the tenancy agreement.

Conclusion

The Tenant's application is dismissed without leave to reapply.

The 1 Month Notice to End Tenancy for cause dated May 29, 2015 is in full effect.

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: July 22, 2015

Residential Tenancy Branch

