



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC

Introduction

This hearing was convened in response to applications by the landlord and the tenant filed under the Residential Tenancy Act (the "Act").

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel an a 1 Month Notice to End Tenancy for Cause, issued on October 28, 2015; and
2. To recover the cost of filing the application.

Both parties appeared, gave 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 at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began in August 2005. Rent in the amount of \$940.00 was payable on the first of each month. The tenants paid a security deposit of \$400.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2015.

The reason stated in the Notice was that the tenant has:

- 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; and
- put the landlord's property at significant risk.

The landlord's agent testified that in September 2015 and October 2015, they conducted routine drop-ins of the building complex as these apartments are for hard to house people. The agent stated that during these drop-ins it was discovered that there was a constant stream of people in the earlier hours attending to the tenant's rental unit.

The landlord's agent testified that they believe the tenant is involved in drug activity which places the landlord's property at risk.

The landlord's agent testified that the tenant's friend also defaced their no smoking's signs as they were found with a marker.

The tenant testified that they do have a few friends that are homeless and that they came around one morning about 2 am. However, they were informed that they could not stay and were asked to leave. The tenant stated that this was the first they had heard of any of his quest writing on the no smoking signs.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- 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; and
- put the landlord's property at significant risk.

In this case, the landlord's agent attended the building complex between September 2015 and October 2015 to conduct routine checks. While the agent indicated that there was a constant stream of people attending the tenant's rental unit, which they believe indicates drug activity; however, the agent did not provide specific details of dates, time or of the number of people said to be attending the rental unit. Further, if the landlord believed the tenant was involved in drug activities it would have been reasonable for the landlord to contact the police to have them investigate.

Further, the landlord's agent indicated the tenants guest have defaced the smoking signs by writing on them; however, the landlord did not inform the tenant of the incident and it would be reasonable to notify the tenant that a problem exists so the tenant could have rectify the problem.

I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I dismiss the landlord's application for an order of possession and I grant the tenant's application to cancel the Notice issued on October 28, 2015. The tenancy will continue until legally ended.

As the tenant was successful with their application, I find the tenant is entitled to recover the filing fee from the landlord. Therefore, I authorize the tenant a onetime rent reduction from a future rent payable to the landlord in the amount of \$50.00 to recover the filing fee.

Conclusion

The tenant's application to cancel the Notice, issued on October 28, 2015, is granted. The tenant is entitled to a onetime rent reduction from a future rent payable to the landlord to recover the filing fee.

The landlord's application for an order of possession is dismissed.

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: January 12, 2016

Residential Tenancy Branch

