



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, 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 on April 8, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on April 9, 2016 for:

1. An Order of Possession - Section 55.

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

Preliminary Matter

At the onset of the Hearing the Landlord confirmed that its application for dispute resolution was not given to the Tenant. Section 59 of the Act requires that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it. As the Landlord did not serve the Tenant with its application for dispute resolution I dismiss the application.

Issue(s) to be Decided

Is the reason on the notice to end tenancy valid?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started March 2013. There is no written tenancy agreement. Rent of \$750.00 is payable on the first day of each month. In December 2015 the Landlord purchased the house containing the basement unit. The Landlord holds a security deposit of \$375.00 taken at the outset of the tenancy. The Tenant receives free Wi-Fi, internet and cable with the rent. The Landlord is not aware of any other terms of the tenancy agreement. On March 26, 2016 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice"). The reason stated on the Notice is that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord states that after purchasing the house containing the rental unit the Landlord smelled smoke and discovered that the Tenant was smoking in the unit. The Landlord states that his children are allergic to smoke and that since his wife is undergoing treatment for cancer she is not to be exposed to smoke. The Landlord provided no medical evidence to support the Landlord's oral evidence.

The Tenant states that The Tenant has smoked in her unit since the onset of the tenancy. The Tenant denies that smoking in the basement unit has caused any serious jeopardy. The Tenant states that since receiving the Notice the Tenant has smoked outside of the unit.

Analysis

Section 47(1) provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, 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. 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 argues that

the Tenant has seriously jeopardized the health of either his wife or his children, there is no evidence to support this assertion. Given the serious nature of ending a tenancy, and considering that the Tenant has not been restricted under the oral terms of the tenancy agreement from smoking, I find that the Landlord has not met the burden of proof required to find that the Tenant has seriously jeopardized anyone or anything by smoking in the unit. I find therefore that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the Tenant to deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled and of no effect. I order the Tenant to deduct \$50.00 from future rent payable.

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: May 11, 2016

Residential Tenancy Branch