



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC MNDC FF

Introduction

This hearing was convened pursuant to the tenant's application to cancel a notice to end tenancy for cause, as well as for monetary compensation. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Both parties were given full opportunity to give affirmed testimony and present their relevant evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

Preliminary Issues

Tenant's Evidence

The landlord stated that he only received the tenant's evidence eight days before the hearing, which is not in compliance with the rules of procedure. The landlord submitted that the tenant's evidence should therefore be excluded. The landlord submitted his written response to the tenant's evidence. I found that the landlord had sufficient time to consider and respond to the tenant's evidence, and it was not necessary for me to adjourn the hearing, and I admitted the tenant's evidence.

Identity of Tenant

In the hearing the landlord stated that the person on the teleconference call was not the tenant; rather, it was someone else. I asked the person who had been affirmed as the applicant tenant whether he was in fact the tenant named in the application, and he stated that he was. I asked the landlord why he thought the applicant tenant was not on the phone, and he said he thought the person speaking sounded like someone else, but he was not sure. I informed the landlord that as he was not sure, and the tenant stated under affirmation that he was the tenant, I proceeded with the hearing.

Issue(s) to be Decided

Is the notice to end tenancy for cause dated April 27, 2016 valid?

Background and Evidence

The tenancy began on or about December 29, 2015. The tenant resides in the lower level of a house under a verbal tenancy agreement. The landlord resides in the upper level of the house.

On April 27, 2016 the landlord served the tenant with a notice to end tenancy for cause. The notice indicates that the reason for ending the tenancy was that the tenant put the landlord's property at significant risk.

The landlord stated that they discovered that a backsplash panel near the stove was warped. The landlord stated that his wife entered the tenant's cooking area and saw that a burner on the stove top was on and red hot, but there was nothing on the burner. The landlord stated that the tenant was sitting at the table and when the landlord's wife asked about the burner the tenant responded that it was on because the landlord had turned the heat off in the kitchen.

The landlord acknowledged that he did turn off the heat breaker in the kitchen because of the tenant's irresponsible use of heat. The landlord also acknowledged that he posted a sign in the tenant's bedroom to remind the tenant to be responsible about the heat and keep the temperature no higher than 65 degrees.

The landlord stated that the backsplash panel in question was installed correctly, over six inches away from the stove when the instructions indicate that the panels should be two to three inches away from the stove. The landlord stated that he contacted the vendor of the panels, who informed the landlord that normal cooking would not warp them. The landlord stated that the tenant willfully misused the stove, and in so doing he could have caused a fire. The landlord stated that he was in fear for his safety and the safety of his family, who reside above the tenant.

The tenant's response was that the main reason the landlord wants to evict the tenant is because of the ongoing conflict between them. The tenant emphasized several times in the hearing that the landlord wants to save money on electricity so he comes into the tenant's space and turns down or turns off the heat.

The tenant stated that he does not know when the damage to the backsplash panel occurred. The tenant stated that he just does normal cooking, and the damage is the landlord's fault because the stove is too close to the wall. The tenant stated that he was cooking when the landlord's wife suddenly appeared without notice.

Analysis

I find that the landlord has failed to provide sufficient evidence to support the notice to end tenancy for cause. The landlord has alleged that the tenant put the landlord's property at significant risk by misusing the stove. The landlord did not provide direct evidence from his wife regarding what she saw and heard, and the tenant denied using the stove to heat the kitchen. The landlord alleged that the tenant's misuse of the stove caused the backsplash panel to warp, but the tenant stated that he was only using the kitchen for normal cooking and he did not know when the damage occurred to the panel. The landlord did not provide sufficient evidence, such as a witness statement or testimony from the vendor of the backsplash panel.

I therefore find that the notice to end tenancy for cause dated April 27, 2016 is not valid and I cancel the notice.

As the tenant's application to cancel the notice was successful, he is entitled to recovery of the filing fee for the cost of his application.

Conclusion

I hereby cancel the notice to end tenancy for cause dated April 27, 2016. The tenancy will continue until such time as it ends in accordance with the Act.

The tenant is entitled to recovery of his \$100.00 filing fee, which he may deduct from his next month's rent.

The tenant's monetary claim 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: June 2, 2016

Residential Tenancy Branch