



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on June 3, 2016. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

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 September 1, 2015 as a month to month tenancy. The Tenant said the tenancy is a verbal agreement and the Landlord agreed no written tenancy agreement was completed by the parties. Rent is \$1,250.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$625.00 in advance of the tenancy. No move in condition inspection report was completed at the start of the tenancy.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated May 31, 2016 by registered mail and personal delivery on June 1, 2016. The Effective Vacancy Date on the Notice is July 1, 2016. The Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant is engaged in illegal activities that have adversely affect the Landlord's quiet enjoyment and jeopardized the Landlord's rights. The second reason is that the Tenant has breached a material term of the tenancy and has not corrected the breach in a reasonable time period. The Landlord continued to say the third reason is the Tenant has sublet the rental unit without the Landlord's permission.

The Landlord said the Tenant is not doing anything illegal but the Tenant has had up to four people living in the unit and he has a dog living in the unit as well. The Landlord said there are no pets or subletting allowed and they only rented to one person.

Further the Landlord said the Tenant agreed to do maintenance in the yard and cut the grass as part of the tenancy. The Landlord said the Tenant is not doing these things so the Tenant has breached the tenancy agreement.

On questioning the Landlord said they did not submit any evidence to support the 1 Month Notice to End Tenancy for Cause.

The Tenant said he is not involved in any illegal activities so this is not a reason to evict him.

The Tenant continued to say there is no written tenancy agreement so there were no discussions about subletting or pets at the start of the tenancy. The Tenant continued to say that his girlfriend is the only one living with him and they do have a dog. The Tenant said his girlfriend and dog have been in the rental unit for months and the Landlord knew about them and he never said a word. The Tenant said he thought the Landlord was ok with his girlfriend and dog being in the rental unit.

Further the Tenant said at the start of the tenancy he agreed to mow the lawn but he did not agree to do yard maintenance and landscaping. The Tenant said the Landlord's property is approximately 20 acres and is full of weeds. The Tenant said he has been mowing the grass when it needs it and between rains.

The Tenant said he has not breached any material terms of the tenancy agreement as there is no written tenancy agreement.

The male Landlord said in closing that the Tenant has breached the tenancy agreement by subletting, having a dog and by not maintaining the yard as agreed. The male Landlord said he wants to end the tenancy and get his property back.

The female Landlord said in closing she is afraid of the Tenant and wants the Tenant to move out.

The Tenant said in closing there is no tenancy agreement so he has not breached any of the terms of the tenancy. The Tenant said the Landlord knew about his girlfriend and dog and the Landlord said nothing and he is not a maintenance man for the Landlords.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlords. The Landlords says the Tenant has breached the tenancy agreement and the Tenant says there was no tenancy agreement so he did not breach it. It is the responsibility of the Landlord to complete a written tenancy agreement so that the terms of the tenancy are clear at the start of the tenancy. If this is not done then it is just the Landlords' word against the Tenant's word. In this situation there is no tenancy agreement and no evidence to support the Landlord's Notice to End Tenancy dated May 31, 2016. As there is no tenancy agreement it is

unclear what the terms of this tenancy are. In these situations the burden of proving a claim lies with the Landlord to prove the Notice to End Tenancy is valid. When there is no evidence submitted to support the Notice to End Tenancy it is just the Landlords' word against that of the Tenant and **that burden of proof is not met.** In this case the Tenants application is to cancel the 1 Month Notice to End Tenancy for Cause dated May 31, 2016. The Tenants have established grounds to show the Landlord's Notice to End Tenancy may be invalid because the Landlord has not proven the reasons given for issuing the Notice to End Tenancy. Consequently, I find for the Tenant and I cancel the 1 Month Notice to End Tenancy for Cause dated May 31, 2016 due to lack of evidence and I order the tenancy to continue as verbally agreed.

As the Tenant has been successful in this matter I order the Tenant to recover the \$100.00 filing fee for this proceeding by deducting it from the August, 2016 rent. The August, 2016 rent is adjusted to \$1,150.00.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated May 31, 2016 to be cancelled and the tenancy is ordered to continue as verbally agreed to.

The August, 2016 rent payment is adjusted to \$1,150.00 so that the Tenant can recover the filing fee of \$100.00 for this proceeding from the Landlord.

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 06, 2016

Residential Tenancy Branch