



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 31, 2016
- b. An order disputing an additional rent increase.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant on May 31, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord on June 7, 2016. I find that the Amended Application for Dispute Resolution was served on the landlord on June 23, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 31, 2016?
- b. Whether the tenant is entitled to an order disputing recover the cost of the filing fee?

Background and Evidence

The parties entered into an order tenancy agreement that provided that the tenancy would begin on December 1, 2012. The rent is \$400 per month. The tenant paid a security deposit of \$200 at the start of the tenancy.

The landlord does not live in the rental property. However, her sister and brother do. The tenant has rented a room in the upstairs portion and shares the kitchen, living room and bathroom with the sister and brother. There is a tenant in the downstairs portion.

The landlord seeks to end the tenancy based on the following:

- The tenant was repeatedly late paying the rent in the past. The tenant was injured in a WCB accident. The landlord testified she told the tenant he could give her the rent when he could.
- The tenant's girlfriend constantly stays with him. She comes out of the tenant's room to use the bathroom. She is very rude, abusive and disrespectful of the others in the rental unit. She also brings a bag full of stuff. The landlord does not know what is included in this stuff.
- The tenant smokes in his room. There is a bad smell coming from the room.
- The tenant does not clean up after he uses the kitchen. Her brother and sister report that he often leaves dirty dishes which they have to clean.
- The tenant has a considerable number of belongings which clutters the small rental unit.
- The tenant entertains late after midnight disturbing other occupants. He leaves the lights on.
- At times he would remove the smoke alarm from the kitchen when cooking and forget to put it back.
- He does not follow agreed house rules re: washing and cleaning cooking utensils as well as the stove clean up.
- He washes and shampoos his hair in the kitchen sink.
- He does not take his shoes off when he enters the rental unit.
- He has a large collection of stuff in the garage that leaves no room for others.
- He has been given several verbal notices.

The tenant disputes much of the landlord's evidence and testified as follows:

- He was injured on the job and had an operation in July 2013 and a follow up operation in July 2015.
- He cleans the dishes when he is able. On occasion he is unable to clean because of his injuries.
- He denies having guest over except this recent girlfriend. He testified he has only had friend over two or three times in the last 3 years.

- The landlord's sister and brother constantly invade his privacy and quiet enjoyment. They are harassing him in an attempt to force him to leave.
- He has helped the landlord's brother clean up the garage.
- The landlord's sister and brother constantly harass and provoke his girlfriend.

Grounds for Termination:

The Notice to End Tenancy relies on the following provisions of section 47 of the Residential Tenancy Act:

- Tenant is repeatedly late paying rent
- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by 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
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Analysis:

The landlord has the burden of proof to establish sufficient cause to end the tenancy based on a balance of probabilities. The evidence presented by the landlord was not satisfactory. She does not live in the rental property. She failed to present evidence from any of the other occupants in the rental property.

I determined the landlord failed to present sufficient evidence to establish cause to end the tenancy for the following reasons:

- The landlord failed to present sufficient evidence to establish the tenant was repeatedly late paying the rent. Further, even if he was late on three or more occasions the landlord acknowledged that he could pay the arrears when he was able while he waited for his WCB claim to be processed.
- The landlord failed to present evidence from other occupants in the rental unit. It is difficult to weigh the allegations in the absence of evidence from the occupants who were allegedly affected. I determined the landlord failed to prove the tenant has significantly jeopardized or unreasonably disturbed another

occupant or the landlord, has seriously jeopardized the health or safety or other lawful right of another occupant or the landlord or put the landlord's property at significant risk. The failure to clean dishes and other complaints are irritants but are not sufficient to amount to give grounds to end the tenancy.

- Section 9 of the Schedule to the back of the Residential Tenancy Act Regulations provides as follows:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

- A guest visiting does not amount to an unreasonable number of occupants in the rental unit. The parties do not have a written agreement. The landlord failed to prove there are rules regarding the presence of guests.
- The landlord failed to prove the tenant has engaged in an illegal activity.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The Amended Application for Dispute Resolution sought an order disputing an additional rent increase. Neither party presented evidence relating to this issue. As a result this claim is dismissed. However, if parties are advised that if the landlord failed to comply with the requirements of the Act as sought out below the rent increase would be of no force and effect.

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

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 11, 2016

Residential Tenancy Branch