



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNL, DRI, LRE, OPT, FF

Introduction

On July 28, 2016, the Tenant submitted an Application for Dispute Resolution requesting the following:

- to cancel a 1 Month Notice to End Tenancy for Cause dated July 21, 2016.
- to cancel a 1 Month Notice to End Tenancy for Cause dated July 25, 2016.
- to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property dated July 25, 2016.
- for an order of possession for the Tenant.
- to dispute an illegal rent increase.
- to set conditions on the Landlord's right to enter the rental unit.
- to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Landlord testified that the 1 Month Notice To End Tenancy For Cause dated July 25, 2016, was issued to the Tenant because a previous 1 Month Notice to End Tenancy dated July 21, 2016, was issued by an agent of the Landlord who no longer works for the Landlord, and the Landlord has no evidence to support the grounds listed within the

Notice. The Landlord withdraws the 1 Month Notice To End Tenancy For Cause dated July 21, 2016.

The Tenant testified that he is currently residing in the rental unit and as therefore he does not request an order of possession as stated within his application.

Issues to be Decided

- Is there Cause to end the tenancy based on the 1 Month Notice to End Tenancy for Cause dated July 25, 2016?
- Is there Cause to end the tenancy based on the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 25, 2016?
- Did the Landlord issue the Tenant an illegal rent increase?
- Is the Tenant entitled to restrict the Landlords right to enter the rental unit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant provided different testimony on the date the tenancy began and whether the tenancy is a fixed term tenancy or a month to month tenancy. Neither party provided the Residential Tenancy Branch with a copy of a written tenancy agreement.

The Tenant submits that there was an oral agreement that the tenancy was for a two year fixed term to continue until the end of May 2017. The Tenant also testified that he had a copy of the written tenancy agreement in front of him, and he testified that the agreement states the tenancy began on June 1, 2015, on a month to month basis.

The Landlord submits that the tenancy started in June 2015, and was for a 1 year fixed term, to continue thereafter as a month to month tenancy.

Both parties testified that Rent in the amount of \$1,000.00 per month is to be paid to the Landlord and that the Tenant paid a \$500.00 security deposit to the Landlord.

The Tenant testified that on July 25, 2016, he received two different Notices To End Tenancy directly from the Landlord as follows:

- 1 Month Notice To End Tenancy For Cause dated July 25, 2016 ("the 1 Month Notice").
- 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 25, 2016 ("the 2 month Notice").

The 1 Month Notice contains three reasons for ending the tenancy:

- Tenant has engaged in illegal activity that has, or is likely to:
 - Damage the Landlord's property
- Tenant has not done required repairs of damage to the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so

The 2 Month Notice contains one reason for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Tenant disputed the Notices by applying for Dispute Resolution within the required timeframes.

The burden to prove the cause to end a tenancy rests with the Landlord. With respect to the issuance of the 1 Month Notice, The Landlord's agent M.V. testified that there is a mixture under a tarp on the property used for growing. M.V. also testified that there is a term of the tenancy that there is no smoking allowed. M.V. testified that the Tenant has not done repairs on the property and he suspects that the Tenant is growing marijuana.

The Landlord did not elaborate on the reasons for ending the tenancy and did not provide any documentary or written evidence to support his testimony or the reasons to end the tenancy.

In reply, the Tenant responded that the Landlord testimony is a fabrication. The Tenant submits that the Landlord has not provided a police report; there are no charges; and there is no evidence from the Landlord.

With respect to the issuance of the 2 Month Notice, the Landlord's agent M.V. testified that the owner wants to move back into the property. He submits that the Landlord is completing a medical residency in Russia and wants to move into the property with her son and fix up the property and sell the property.

The Tenant testified that on June 1, 2016, he received a text message from C.C. an agent for the Landlord. The Tenant testified that the text message stated that the monthly rent has increased to \$1,400.00 per month. The Tenant testified that he responded to the text message by stating that the increase is an illegal rent increase. The Tenant testified that he never received a proper Notice of Rent Increase from the Landlord.

The Tenant testified that on the day before the Landlord served him the two Notices to end tenancy, the owner I.H. gave him Notice for a showing of the property. He testified that I.H. told him she had sold the property for over \$500,000.00. He testified that he received the two Notices to End Tenancy the following day. The Tenant testified that next day he spoke to somebody who indicated that they were planning on renting the premises.

The Landlord's lawyer K.B. responded by stating that she has no knowledge of a sale contract. The Landlord's agent M.V. responded that his neighbor is interested in buying the property, but there is no contract.

Residential Tenancy Policy Guideline #2 Good Faith Requirement when Ending a Tenancy provides the following:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice To End Tenancy.

Residential Tenancy policy Guideline # 32 Illegal Activities provides the following:

The party alleging illegal activity has the burden of proving that the activity was illegal. Thus the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of procedure, a legible copy of the relevant statute or bylaw.

Residential Tenancy Policy Guideline # 8 Unconscionable and Material Terms provides the following:

To end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing:

- *That there was a problem;*
- *That they believe the problem is a breach of a material term of the tenancy agreement;*
- *That the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*

- *That if the problem is not fixed by a deadline, the party will end the tenancy.*

Analysis

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

The tenancy is a month to month tenancy and not a fixed term tenancy. The Landlord submits that the tenancy is currently a month to month tenancy. The Tenant testified that the written agreement before him states that the tenancy began on June 1, 2015, on a month to month basis. I find that the Tenant's testimony regarding what is contained within the written agreement carries more weight than the Tenant's testimony that there was an oral agreement with the Landlord that the tenancy is for a fixed term until the end of May 2017.

Section 49 of the Act permits the Landlord to issue the Notice if the Landlord intends in good faith to occupy the rental unit. The burden is on the Landlord to prove the intent to occupy the rental unit. I find that there is insufficient evidence from the Landlord's agent to establish that the owner has a good faith intention to move into the rental unit. The Tenant's testimony regarding an attempted illegal rent increase and the sale of the home suggests the Landlord has another reason for ending the tenancy. The owner was not present to testify at the hearing and the Landlord's agent did not provide any documentary evidence from the owner to establish that the owner truly intends to move into the rental unit and that there is no ulterior motive. There is insufficient evidence from the Landlord to establish the owner's true intent to move into the rental unit.

The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 25, 2016, is set aside.

With respect to the 1 Month Notice To End Tenancy For Cause dated July 25, 2016, the Landlord did not provide any evidence to support the allegation that the Tenant has engaged in illegal activity and the Landlord did not specify or provide a relevant statute or bylaw.

The Landlord stated that the Tenant has not done repairs on the property but did not provide any detail surrounding the repairs that were required or why they were required to be completed by the Tenant.

The Landlord states that the Tenant is smoking on the property and that smoking on the property is a breach of a material term of the tenancy agreement. However, the

Landlord did not provide a copy of the tenancy agreement to establish that smoking on the property is a material term of the tenancy agreement. Furthermore, the Landlord did not testify or provide any documentary evidence that the Landlord informed the Tenant in writing that there is a problem that is a material term of the tenancy that must be fixed by a reasonable deadline and that if it is not fixed the Landlord will end the tenancy. I find that there is insufficient evidence from the Landlord to support the reasons within the 1 Month Notice to end the tenancy.

The 1 Month Notice To End Tenancy For Cause dated July 25, 2016 is set aside.

With respect to the Tenant's request regarding the Landlords right of entry into the rental unit, I order that the Landlord provide the Tenant with 24 hours written Notice as required by section 29 of the Act for the remainder of the tenancy.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with his application. I authorize the Tenant to deduct the amount of \$100.00 from one future rent payment.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's application to cancel the 1 Month Notice and the 2 Month Notice dated July 25, 2016 is granted. The tenant is authorized to deduct \$100.00 from one future rent payment.

The tenancy will continue until ended in accordance with the Act.

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: September 21, 2016

Residential Tenancy Branch