



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an application brought by the tenant requesting an order canceling a Notice to End Tenancy that was given for cause.

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for cause.

Background and Evidence

The parties agree that this tenancy began on April 1, 2013.

The parties also agree that on September 2, 2016 the landlord served the tenant with a one-month Notice to End Tenancy giving the following reasons:

- Tenant or person permitted on the property by the tenant has 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.

- Tenant has caused extraordinary damage to the unit or property.
- Tenant has not done required repairs of damage to the unit.

The landlord testified that the reason the Notice to End Tenancy has been given is because the amount of clutter in the tenant's rental unit was excessive.

The landlord further testified that, when the tenant was allowed to move into this rental unit from his previous unit, it was on the condition that the tenant was to keep this unit clean and not allow a large amount of clutter to build up in the unit.

The landlord further testified that on September 2, 2016, when he went into the rental unit with a real estate agent to take photos, the unit was so cluttered you could barely move through the unit and the unit smelled terribly. The smell was so overbearing it took my breath away, and the real estate agent had the same issues, and therefore we left the rental unit. I came back later with the Notice to End Tenancy.

The landlord further testified that is his belief that the condition of the rental unit was both a health hazard and the fire hazard.

The landlord further testified that, since giving the Notice to End Tenancy, the tenant has removed 40 to 50 bags and boxes of items from the rental unit as well as a pickup load of old appliances.

The landlord further testified that, even after removing all of the items above, there is still a lot of clutter in the rental unit that you have to walk around to access the unit.

The landlord is therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued for as soon as possible.

The tenant testified that, 1 to 1½ weeks prior to the eviction, the landlord put up for sale sign on the property, and at that time the landlord stated that there's a possibility the new owners may require him to vacate, and therefore the landlord suggested he start packing up his belongings in case he has to move.

The tenant further testified that he was in the midst of sorting things to get ready for a possible move when the landlord showed up, unannounced, on September 2, 2016 with a realtor. He further states that the condition of the rental unit was very messy at that time as he had piled things in the living room so that he could sort them.

The tenant further testified that the landlord returned later on that same date with the Notice to End Tenancy.

The tenant further testified that since receiving the Notice to End Tenancy he has removed approximately 7 to 8 bags of garbage, and 30 to 35 boxes of items that were donated to charity. He further states that he also removed a load of metal and electronics to recycling.

The tenant further states that, as can be seen in the video evidence presented, the rental unit is now clean and is not cluttered, and he therefore disputes that the rental unit is a safety or fire hazard.

The tenant therefore requests that the Notice to End Tenancy be canceled, and that this tenancy be allowed to continue, until he gets accepted for subsidized housing.

In response to the tenants testimony the landlord stated that, the for sale sign did not go up until after he had given the tenant the Notice to End Tenancy, and the reason the notice was given is they were unable to get into the rental unit due to the clutter and the extreme smell.

Analysis

It is my finding that the landlord has not met the burden of proving the reasons given for ending the tenancy. When a Notice to End Tenancy is given it is the landlord's responsibility to meet the burden of proving the grounds on which the notice has been issued. I will deal with each of the grounds below.

Tenant or person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord has stated that he believes that the condition of the tenant's rental unit posed both a fire hazard and a health hazard to other occupants of the rental property; however it's my finding that the landlord has not met the burden of proving that claim. The landlord has provided no evidence from any qualified professionals to support either of these claims.

Tenant has engaged in illegal activity that has or is likely to damage the landlord's property.

The landlord is provided no evidence of any illegal activity, and the tenant denies being engaged in any illegal activity.

Tenant has caused extraordinary damage to the unit or property.

The landlord has provided no evidence to show that there is any extraordinary damage to this rental unit or the rental property.

Tenant has not done required repairs of damage to the unit.

The landlord has not provided any evidence to show that the tenant was required to do any repairs to the rental unit, and in fact it appears that the landlord is actually referring to his request to the tenant to keep the rental unit clean and free of clutter.

It is my decision therefore that, since the landlord has not met the burden of proving any of the grounds is listed on the Notice to End Tenancy, I will cancel this notice and this tenancy continues.

Conclusion

The section 47, one month Notice to End Tenancy, dated September 2, 2016 is hereby canceled and this tenancy continues.

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: November 07, 2016

Residential Tenancy Branch