



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 55, 47, 67, 62, 32,

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed their Application requesting an order of possession for cause.

The Tenant filed their Application requesting to cancel a 1 Month Notice To End Tenancy For Cause; for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; for an order that the Landlord make repairs to the unit; and for the Landlord to provide services or facilities required by law.

Both parties appeared at the hearing. The Tenant was assisted by her advocate B.K. The hearing process was explained and the participants were asked if they had any questions. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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 Matters

The Tenant is seeking several orders. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant’s application is whether or not the tenancy will continue. Accordingly, I find it appropriate

to exercise my discretion to dismiss all but the Tenant's Application to cancel the 1 month notice to End Tenancy for Cause, with leave to reapply for the other claims at a later date.

The Landlord submitted six pages of evidence to the Residential Tenancy Branch on October 17, 2016. The Landlord testified that he did not provide the Tenant with a copy of the evidence. The Tenant has not had the evidence disclosed to her and has not had an opportunity to consider the evidence or respond. The six pages of evidence will not be considered in my decision.

Issue to be Decided

- Does the Landlord have cause to end the tenancy?
- Is the Landlord entitled to an order of possession for cause?

Background and Evidence

The parties testified that the tenancy began on July 1, 2010, as a month to month tenancy. Rent in the amount of \$500.00 is payable to the Landlord by the first day of each month. The Tenant paid a security deposit of \$250.00 to the Landlord.

The Landlord testified that there was used oil on the rental property in a container and that the Tenant spilled the oil in front of rental units on the rental property. The Landlord testified that he found out about the oil spill the day after it happened. The Landlord testified that the cement sidewalk\ walkway had to be cleaned and pressure washed to remove the oil. The Landlord testified that the RCMP looked into the issue and opened a file.

The Landlord testified that he has provided a letter from a resident J.B. regarding the oil spill on the pathway around the building. The statement indicates J.B. saw the Tenant walk by his window one night, thirty minutes after the vandalism. The written statement from J.B. continues and includes other behaviours that he observed of the Tenant.

The Landlord testified that he issued the Tenant a 1 Month Notice to End Tenancy for Cause dated September 30, 2016 ("the 1 month Notice"). The reason for ending the tenancy within the 1 Month Notice is that:

- Tenant has caused extraordinary damage to the unit/site property /park.

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 1 Month Notice within the required time period.

In response to the Landlord's testimony, the Tenant testified that the occupant who lives next door to her changed his oil and left the dirty oil under the stairs by her rock garden. She testified that she offered to help him dispose of the oil. After two months passed, she was cleaning up the property and was worried that the rain would overflow into the oil container so she picked it up and it slipped from her hands. She testified that the oil spilled out in front of the apartment. She testified that she apologized for the spill. The Tenant testified it was dark out at the time of the spill.

The Tenant's advocate B.K. testified that the written statement from J.B. only says that the Tenant walked by the window one night. B.K. submitted that the Landlord has not produced J.B. as a witness in the hearing and his statements cannot be affirmed or cross examined.

The tenants advocate submitted that the testimony and evidence from the Landlord does not meet a threshold of extraordinary damage.

Analysis

The Landlord's Notice states that the Tenant has caused extraordinary damage to the rental unit/site property/ park.

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I find that the Tenant did not cause extraordinary damage to the rental property. There is insufficient evidence from the Landlord that the oil spill was intentional, and I accept the Tenants testimony that it was accidental.

While I acknowledge that the Landlord pressure washed the oil off the sidewalk, I do not find that the oil spill meets the threshold of extraordinary damage.

The Tenants Application to cancel the 1 Month Notice To End Tenancy For Cause dated September 30, 2016 is granted. The 1 Month Notice to End Tenancy for Cause, dated September 30 2016, is cancelled.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's Application to cancel the 1 Month Notice dated September 30, 2016, is granted.

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: November 24, 2016

Residential Tenancy Branch