



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought to cancel a 1 Month Notice to End Tenancy for Cause issued on October 28, 2016 (the "Notice").

Both parties called into the hearing which was held by teleconference on December 19, 2016. The Tenant appeared on her own behalf. The named Landlord on the Notice, as well as the application was L.M. who testified that she has managing the property for 15 years. L.M. stated that the rental property has been owned by the same owner, V.D. Ltd., for the 15 years that she has managed the property. For the purposes of this Decision I will refer to L.M. as the Landlord.

Both parties were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Caution

During the hearing both parties engaged in inappropriate conduct, including yelling and interrupting. They were both cautioned that such behaviour was not acceptable in the arbitration which is a legal proceeding.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

The Landlord testified that the rental unit is on the ground floor of a three story low rise walk up apartment building with 12 units. She confirmed that the tenancy began on December 1, 1979. Monthly rent is currently \$943.00.

The Reasons cited on the Notice are as follows:

“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

The Landlord has also typed the following on the Notice next to the above:

“Unsanitary conditions kitchen & bathroom. Hoarded items throughout entire suite.

* letter del'd Oc 1st/16 to request tenant to clear hoard”

Notably the tenancy agreement was not before me. L.M. stated that the only document she has with respect to this Tenant is an “Application for Rent of Suite” which was signed November 15, 1979; that document was not before me.

The Tenant testified that she did not have a tenancy agreement.

L.M. stated that she has always had a very cordial relationship with the Tenant. She stated that she has been very concerned about the Tenant's well-being and that she has tried to help her for years. She stated that the Tenant is currently refusing help and her situation is deteriorating to such an extent that it is negatively affecting other occupants of the rental building.

Introduced in evidence was a copy of the letter dated October 1st, 2016 wherein L.M. informs the Tenant that she must have ‘all accumulated belongings from floor to ceiling’

considered a hoard, removed no later than Friday October 28th". This letter also informs the Tenant that her rental unit would be inspected on October 28th at 2:00 p.m.

Photos of the rental unit (taken on October 28th) depict considerable items in the rental unit, stacks of newspapers, and unsanitary conditions. The Landlord also stated that the Tenant feeds racoons, birds and other wildlife which has attracted rats and mice. She stated that the rental unit is on the ground level and other renters find it difficult to enter the rental building because of the number of racoons. She also stated that the situation has worsened such that there is now a significant rodent infestation as a result of the Tenant's behaviour.

Also introduced in evidence was a document from a pest control company titled an "Emergency/Follow up Report" dated December 6, 2016 wherein the writer notes that he was in suite #2 (the subject rental unit) as well as suite #1. This report indicates the following with respect to the subject rental unit: "Lots of mice droppings, holes in the walls, poor sanitation, accumulation of filth, example "boxes, old clothing, books, garbage, newspapers". The report indicates that in suite #1, 10-12 mice were trapped.

The Landlord stated that as of December 7th the Tenant is still feeding animals outside and that the City Hall has now become involved.

L.M. stated that she is aware the Tenant has health issues, but she is refusing help.

The Tenant testified as follows. She stated that she was perturbed by the "Mouse Inspector". She stated that he came into her apartment and told her how to live her life, that he insulted her and made up his mind before he came into her apartment. She further stated that the Landlord brought "disrespect" to her life.

When I asked the Tenant to respond to the October 1, 2016 letter, she became very agitated and told me that I had already made up my mind before I heard anything. She stated that I was biased, that I was "showing off" by typing during the hearing and that the arbitration was a "charade".

The Tenant stated that she has dealt with the mice problem and has "cleaned out every vent and put turpentine". She further stated that the only mice you will find in her rental unit are dead mice.

When I asked the Tenant if she fed racoons and birds, she responded that she "preserves wildlife".

The Tenant further stated that she is not able to move any items out because “all of the rental trucks have been rented by the movie industry”. The Tenant also stated that she wants to give away all of her toys to children.

Analysis

The reasons cited on the Notice are that the Tenant has breached a *material term of the tenancy agreement* that was not corrected within a reasonable time after written notice to do so.

The Landlord testified that she has an “Application for Rent of Suite”; that document was not before me. The Tenant testified that she did not have a tenancy agreement.

Based on the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

Without a written tenancy agreement, I am unable to find that the Tenant breached a *material term*. While the letter of October 1, 2016 gives the Tenant clear instructions to the Tenant, this letter does not constitute a written tenancy agreement.

Pursuant to *Residential Tenancy Branch Rules of Procedure* Rule 6.6, the Landlord bears the burden of proving the reasons cited on the Notice. In this case, I find that the Landlord has failed to prove the Tenant breached a *material term of the tenancy agreement* that was not corrected within a reasonable time after written notice to do so, as no such written tenancy agreement exists. Accordingly, the Tenant’s request to cancel the Notice is granted.

The Tenant is cautioned, that while this Notice has been found to be invalid, the Landlord may have grounds to end the tenancy pursuant to other reasons set out in section 47 of the *Residential Tenancy Act*. The photos submitted by the Landlord, as well as the report from the pest control company indicate the condition in which the Tenant keeps her rental unit, as well as her feeding of wildlife, may unreasonably disturb or seriously jeopardize the health or safety of the other occupants and put the Landlord’s property at a significant risk.

Conclusion

The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Residential Tenancy 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: December 21, 2016

Residential Tenancy Branch