



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

The tenant, the tenant's two advocates (collectively the "tenant"), the landlord and the landlord's advocate (collectively the "landlord") attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is the downstairs level of a two story unit. The landlord resides upstairs while the tenant resides down. As per the submitted tenancy agreement and testimony of the parties, the tenancy began on September 15, 2007 on a month-to-month basis. Rent in the amount of \$791.56 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$350.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice on November 18, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

Landlord

In November of 2016, the rental unit was inspected due to a water issue in the tenant's kitchen ceiling. During this inspection the landlord's advocate noticed damage unrelated to the kitchen ceiling water issue. Specifically the landlord's advocate observed that the toilet was leaking and mold was present behind the toilet. Additionally the landlord indicated that mold was found under a kitchen cabinet on the floor and up the walls in the kitchen and hallway. The landlord has provided photographs of what she described as mold.

During the inspection the landlord also observed stacked boxes and a clothes dryer beside the "open flame" furnace.

It is the landlord's position that the tenant's failure to report the mold put the landlord's health at risk. The landlord has submitted a doctor's note. The landlord also contends that the stacked boxes and laundry drying outside the open door of the furnace room poses a fire hazard.

The landlord testified that the rental unit is required to be unoccupied for the repairs related to the kitchen ceiling. In an effort to support this claim, the landlord has submitted an email from the restoration company.

Tenant

It is the tenant's position that at the start of the tenancy he reported a smell of mildew to the landlord and the landlord took no action to rectify it. The tenant testified that the landlord knew of the leaking toilet, he had reported it to the landlord in the past and it went unrepaired. The tenant testified that any present mold is minor and is related to the moisture in the unit, not a result of his actions.

In relation to the boxes, the tenant acknowledged that he has boxes but has removed some since receiving the 1 Month Notice. The tenant explained that he does hang his clothes to dry, however it is not beside any "open flame" on the furnace. The furnace is in a self-contained room with a closed door. The tenant has folded up his clothes dryer

since receiving the 1 Month Notice. The tenant testified that it is his belief that neither of these issues constitutes a fire hazard.

The tenant indicates that he did not receive any written notice to remove boxes or his clothes dryer prior to the 1 Month Notice and therefore did not not have sufficient time to take corrective action prior to the 1 Month Notice.

Analysis

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant.

The landlord has provided insufficient evidence to establish the tenant has seriously jeopardized the health of the landlord by failing to report mold. Although the landlord has provided photographs of possible water damage, the landlord did not provide any form of mold analysis to verify the existence of mold in the rental unit. In the absence of evidence substantiating mold in the unit, I cannot find the landlord's health was jeopardized, and therefore dismiss the landlord's application to end the tenancy on this ground.

Unless there is a single occurrence that is so severe that it warrants an immediate end to tenancy, fairness requires that a landlord give a tenant notice that an issue is in violation of the tenancy agreement or *Act* together with a written warning that the failure to correct the issue will result in the tenancy being terminated.

The evidence presented does not establish the boxes and clothes dryer were a fire hazard or severe enough to warrant an immediate end to tenancy. Based on the tenant's undisputed testimony, I am satisfied that the tenant did not receive any written notice to remove his boxes or clothes dryer prior to the 1 Month Notice. Therefore I dismiss the landlord's application to end the tenancy on the ground the tenant put the landlord's property at significant risk.

In relation to the landlord's claim that the restoration company requires the rental unit to be unoccupied to conduct necessary repairs, I find the notice to end tenancy issued by the landlord does not include this ground and therefore cannot form any basis to end the tenancy.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is 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: January 09, 2017

Residential Tenancy Branch