



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and 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

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on April 1, 2015 on a fixed term until October 31, 2015 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,100.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$550.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

In October of 2016 repairs were untaken to repair water damage within the rental unit. The initial repairs were completed however the subsequent repairs required vacancy of the rental unit. The tenant refused to vacate due to insufficient notice.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated December 31, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant is repeatedly late paying rent
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The landlord testified to five instances in which the tenant paid his rent late. The tenant testified that he placed his rent cheque in the landlord's mailbox on or before the first of every month.

The landlord testified that the tenant regularly leaves his ground level windows open which puts the landlord property at risk. Specifically she testified that any resulting damage from the open windows would not be covered by her insurance provider. Additionally the landlord contended that the tenant's failure to temporarily vacate to accommodate the required repairs puts her property at risk for further damage to the house.

The tenant acknowledged leaving his windows open to allow the flow of fresh air into the basement suite. He denies this puts the landlord's property at risk. In relation to the temporary vacancy for required repairs, the tenant maintains that the two days' notice via text was not sufficient.

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.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

In this case the landlord testified that the tenant was late paying his rent on at least five occasions, whereas the tenant contended that he placed his rent in the landlord's mailbox on or before the first of every month. The landlord has provided insufficient

evidence to establish the tenant has paid his rent late and for this reason I find the landlord has failed to prove her burden to end the tenancy on this ground.

The landlord has failed to provide sufficient evidence to substantiate how the tenant's refusal to vacate puts her property at risk. The repairs described by the parties do not constitute emergency repairs, and the landlord has provided insufficient notice to the tenant to vacate. In order to end a tenancy for renovations or repairs that require vacate possession of the rental unit, the landlord must issue a 2 Month Notice to End Tenancy for Landlord's Use of Property.

In relation to the windows, I find the landlord has provided insufficient evidence to establish the open windows puts the landlord's property at significant risk. The parties did not provide a history of damage resulting from the open windows nor did the landlord provide a copy of her insurance policy verifying her liability.

Overall, I find the landlord has failed to meet her burden in proving the reasons behind the notice. Consequently, the tenant's application to cancel the 1 Month Notice is upheld.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

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 27, 2017

Residential Tenancy Branch