



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested an Order cancelling a 1 Month Notice to End Tenancy for Cause issued on January 17, 2017 with an effective date of February 14, 2017 (the "Notice").

The hearing was conducted by teleconference on February 7, 2017. Both parties called into the hearing and 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.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a Notice, the Landlord bears the burden of proving the reasons for issuing the Notice; accordingly, the Landlord presented his case first.

The Landlord testified that the tenancy began on December 15, 2016. He stated that the monthly rent is \$1,000.00 payable on the 15th of the month.

When I asked the Landlord if a written tenancy agreement existed, the Landlord claimed that “they gave me a tenancy agreement and I signed it”. This tenancy agreement was not provided in evidence.

The reasons cited on the Notice are as follows:

- the Tenant is repeatedly late paying rent;
- the Tenant has allowed an unreasonable number of occupants in a rental unit;
- the Tenant or a person permitted on the residential property by the Tenant has
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to
 - damage to the landlord's property,
- the Tenant has caused extraordinary damage to a rental unit or residential property;
- Tenant knowingly gave false information to a prospective Tenant or purchaser viewing the rental unit/site or property/park; and,
- the rental unit must be vacated to comply with a government order.

On the Notice the Landlord also wrote: “HEALTH REASON SMOKING PROBLEM”

The Landlord stated that the Tenant was late paying rent December and January.

The Landlord also stated that the rental unit is only a two bedroom and that the Tenant regularly has her two children, as well as her mother and a man, for a total of five people in the rental unit.

In terms of the claim that the Tenant has “seriously jeopardized the health or safety or lawful right of another occupant or the landlord”, the Landlord stated that the Tenant and her friends smoke in the rental unit. He stated that he told the Tenant numerous times not to smoke in the rental unit. When I asked him if the tenancy agreement prohibited smoking, he confirmed this was not included in the tenancy agreement.

In terms of the claim that the Tenant has “put the Landlord’s property at significant risk” the Landlord stated that in addition to the smoking the Tenant made an igloo with her children in the back yard and he believes that the grass will die. He also stated that the Tenant does not pick up her garbage. He confirmed that he did not have any pictures to

support these claims as he does not have a camera or a phone. He also claimed that the Tenant's music is very high, every day.

In terms of the Landlord's claim that the Tenant "knowingly gave false information to a prospective tenant or purchaser of the rental property", the Landlord confirmed that the false information is that she smokes and that she believes she owns the back yard.

In terms of the Landlord's claim that the rental unit must be vacated to comply with a government order, the Landlord stated that the rental unit is legal and he did not mean to check that off.

The Tenant also testified on her own behalf.

The Tenant stated that she does not smoke in her rental unit. She also stated that she has two small children and one has asthma and she never smokes around them and never smokes in the house. The Tenant stated that at approximately 8:30 p.m. on January 10, 2017 she had put her children to bed and she was cooking and spilled something on the burner. She stated that her smoke detector went off and the Landlord came downstairs. She said that she allowed him to come in the house to confirm that it was smoke from her cooking, not from cigarettes (as he had alleged). The Tenant stated that the Landlord told her she was not allowed to cook after 8:00 p.m.

The Tenant denied that she has her mother and another male living in the rental unit. She stated that the Landlord is aware that her mother has her own house and lives down the road. She also stated that her male friend comes to visit, but does not reside in the rental unit. The Tenant stated that at Christmas time she had her family in town, but they were only there for four days.

In terms of the Landlord's claim that the Tenant put the property at risk by building an igloo, the Tenant denied this created any such risk. She also stated that the Landlord believes she does not have access to the backyard, yet, the Tenant stated that she would never move into a rental unit where her young boys do not have access to the backyard. She stated that on January 27, 2017 the Landlord told her that she was not to use the backyard.

The Tenant further stated that the Landlord is harassing her and is down in her rental unit every day. She stated that she called the police and one of the officers told the Landlord he was to abide by the *Residential Tenancy Act* in terms of entering the rental unit.

In reply the Landlord testified as follows. He stated that he saw her smoking the day the smoke alarm went off.

The Landlord also stated that he only entered the rental unit twice; once to put the handle on the fridge and once in January when the water pipes were freezing. He stated that he called a plumber and the Tenant was not home. The Landlord also stated that he did not call the Tenant to inform her of this.

The Landlord stated that the backyard is not “safe” for the children because it is new and it is not even.

The Landlord further stated that the Tenant is “lying all the time”. The Landlord also stated that the Tenant does not respect him.

Analysis

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

The Landlord alleged the Tenant is repeatedly late paying rent and stated she was late twice. *Residential Tenancy Policy Guideline 38* provides that three late payments are the minimum number sufficient to justify a notice under these provisions. Accordingly, I find the Landlord has failed to prove the Tenant is repeatedly late paying rent.

The Landlord also alleged the Tenant has allowed an unreasonable number of occupants in a rental unit. The Tenant denies this allegation and testified that her mother and boyfriend visit but do not occupy the rental unit.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. As such, and without further evidence from the landlord, I find the Landlord has failed to submit sufficient evidence to support a finding that the Tenant has allowed an unreasonable number of occupants in a rental unit.

Similarly, I find that the Landlord has failed to prove the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk. The Landlord alleges the Tenant and her friends smoke in the rental unit. The Tenant adamantly denies this citing her son's asthma as a reason she does not smoke inside. The Landlord failed to submit

any further evidence to substantiate his claim in this regard and accordingly has not met the burden of proving this claim.

The Landlord also failed to submit any evidence to support a finding that the Tenant or a person permitted on the property has engaged in illegal activity that has caused or is likely to damage to the landlord's property.

The Landlord alleged that the Tenant and her children caused extraordinary damage to a rental unit or residential property by building a snow igloo. He further claimed the grass would be damaged. He failed to provide any further evidence to support such a claim. Additionally, as the hearing occurred in February, any potential damage to grass would likely not be apparent until the growing season. I find the Landlord has failed to prove this claim.

Another reason cited on the Notice is that the Tenant knowingly gave false information to a prospective Tenant or purchaser viewing the rental unit/site or property/park. The Landlord confirmed he is not selling or attempting to re-rent the property and as such this is not applicable. The Landlord confirmed that he erroneously checked the box indicating that the rental unit must be vacated to comply with a government order.

The Landlord is cautioned to abide by section 29 in terms of entering the rental unit.

Conclusion

The Landlord has failed to prove any of the reasons set out in the Notice. The Tenant's Application for an Order canceling the Notice is granted. The tenancy shall 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: February 10, 2017

Residential Tenancy Branch