



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, CNC

Introduction

On March 30, 2017, the Tenant submitted an Application for Dispute Resolution asking to cancel a Notice to end tenancy, and requesting that the Landlord to comply with the Act, regulations, or tenancy agreement, and to suspend or set conditions on the Landlord's right to enter the rental unit.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, 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 and Procedural Matters

The Tenant withdrew his request within the Application to suspend or set conditions on the Landlord's right to enter the rental unit.

The Landlord corrected the spelling of his name within the Tenant's Application. The Application is amended to the correct spelling.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?
- Should the 1 Month Notice be cancelled?

Background and Evidence

The parties testified that the tenancy commenced in May 2000. Rent in the amount of \$467.00 is due on the first day of each month. The parties could not recall whether a security deposit was paid. Neither party provided a copy of a tenancy agreement.

The Landlord testified that a 1 Month Notice To End Tenancy For Cause dated March 27, 2017, (the 1 Month Notice) was posted on the Tenant's door.

The reason for ending the tenancy within the 1 Month Notice is:

Tenant has allowed an unreasonable number of occupants in the unit /site
Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord

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

Tenant has not done required repairs of damage to the unit/site

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

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 testified he received the 1 Month Notice on March 27, 2017, and filed an application for dispute resolution on March 30, 2017.

The Landlord Mr. I.K. testified that he has received reports of drug use and drug dealing. He submitted that the Tenant had a person staying with him who is dealing drugs.

The Landlord also testified that the Tenant's unit has a bad odor, which may be drug related and the unit is very dirty. He testified that he understands the Tenant breaks things.

The Landlord testified that he notified the Tenant in writing about his concerns with the Tenant's guest regarding the selling drugs, and informed him that his guest was not permitted on the property. The Landlord stated that he told the Tenant if his guest was on the property he would end the tenancy.

The Landlord's manager Ms. D.B. testified that she gave notice to the Tenant that a handyman was coming into the unit. She testified that the Tenants guest was present and refused to leave the rental unit. She testified that the Tenants guest showed behaviour that was threatening. She testified that when he was asked to leave he refused and argued with her. She testified that he was getting elevated.

The manager testified that she does not know of any drug use, or whether or not the Tenant's friend is a drug dealer.

The Landlord testified that the Tenant has mental health issues and that other occupants are scared of him.

In response, the Tenant testified that he does not have a mental health condition. The Tenant submitted that he is not threatening but is an excitable person.

The Tenant testified that he stepped out to get milk and left his friend in the unit when the handyman came into the unit. He testified that his friend had no idea who the handyman was and refused to leave the unit.

The Tenant testified that the Landlord has given him a number of notices for entry for maintenance of the unit. He submits that the Landlord expects him to vacate while the handyman performs the work.

The Tenant submitted that the Landlord's allegations of drug use are unfounded. The Tenant testified that since the incident he has not had his friend come over.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reasons to end the tenancy within the Notice are valid.

The Landlord failed to submit any documentary evidence to the Residential Tenancy Branch in support of his testimony on the reasons to end the tenancy listed in the 1 Month Notice.

There is insufficient evidence that the Tenant or his guest were dealing drugs within the rental property.

The Landlord testified that the unreasonable number of occupants is not due to the Tenant having an unauthorized person living in the unit, but rather he has a friend that the Landlord does not authorize. I find that the Tenant does not have an unreasonable amount of occupants in the unit.

I find that the Tenant was obligated to allow access to the Landlord for inspection or repairs, but was not obligated to leave the rental unit. I do not find the testimony of the Landlord's manager about the argument that ensued amounts to a threat.

In addition, the Landlord provided insufficient evidence that the Tenant has threatened or treated other occupants on the property in a manner to make them feel unsafe.

Pursuant to Section 30 (1)(b) of the Act, the Landlord must not unreasonably restrict access to a person permitted on the property by the Tenant. The Tenant is allowed to have guests in his unit, and is responsible for their actions. There is insufficient evidence from the Landlord to support the decision to restrict the Tenant's guest. I do not find that the Tenant breached a material term of the tenancy by allowing his guest on the property.

There is insufficient evidence from the Landlord to support ending the tenancy; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated March 27, 2017.

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

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated March 27, 2017, is cancelled.

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: May 04, 2017

Residential Tenancy Branch