



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MT

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for additional time to do so. Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing the tenant agreed that he had applied for additional time in error. Since the tenant made application to dispute the notice to end tenancy in a timely manner, this portion of the tenant's application is dismissed.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on November 01, 2015. The rental unit consists of a 400 square foot cabin located on acreage. The property also has two other residences. The monthly rent is \$574.00 payable on the first of each month.

The parties agreed that approximately a year ago the tenant asked the landlord if he could start a home based small leather business. The landlord stated that since the property is designated as agricultural property, a leather business was not permitted by the agricultural authority.

The tenant stated that he contacted the local municipality and was informed that a business such as this did not require a business license. The landlord added that the dyes required to treat leather were harmful to the health of the occupant and the landlord and also were absorbed by the walls and ceiling thereby causing damage to the rental unit.

On May 17, 2017, the landlord conducted an inspection of the rental unit after giving the tenant proper notice. The landlord noticed that a commercial grade sewing machine was set up in the bedroom. The landlord informed the tenant that he was not authorized to use commercial machinery inside the rental unit. The landlord reminded the tenant that he did not have the permission of the landlord to carry out a business inside the rental unit. The landlord also stated that she noticed the odour of smoke inside the unit and reminded the tenant of a clause in the tenancy agreement regarding the prohibition of the smoking of any substance inside the unit.

ON May 18, 2017, the landlord served the tenant with a warning letter which referenced clauses in the addendum to the tenancy agreement, regarding no smoking inside the rental unit, yard maintenance and garbage disposal. The letter also informed the tenant that he was not supposed to have a business inside the rental unit and ordered him to remove the business equipment from the rental unit.

The warning letter instructed the tenant to remedy all breaches by May 28, 2018 and informed the tenant that an inspection would be conducted on May 29, 2017 to ensure that the tenant was in compliance.

On May 29, 2017 the landlord returned to the property for an inspection. The landlord stated that the tenant was not home and that the sewing machine was still plugged into an electrical outlet. The landlord also stated that the odour of smoke was reduced but still present. The landlord served the tenant with a 30 day notice to end tenancy for cause by posting the notice on the front door.

The landlord expressed concern that the electric supply to the cabin may not support the use of power required to operate the commercial sewing machine.

The tenant stated that he was involved in a program that the Ministry of Social Development offered to people with disabilities, who wish to become self-employed. The tenant stated that he did some research into the prospect of sewing leather as a home based business and found out that he did not require a business license to do so. The tenant did not provide any documents to support his testimony. The tenant stated that since he was given the notice to end tenancy he has stopped working his craft.

The tenant denied smoking inside the rental unit. He stated that he sat outside on the door ledge when he smoked but agreed that he sometimes left the door open and that may have resulted in smoke entering the rental unit.

On May 29, 2017, the landlord served the tenant with a one month notice to end tenancy for cause with an effective date June 28, 2017. The notice was served for the following reasons;

1. Tenant or a person permitted on the property by the tenant:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
2. Tenant has engaged in illegal activity that has or is likely
 - to damage the landlord's property
 - jeopardize a lawful right or interest of another occupant or the landlord.
3. Tenant has not done required repairs of damage to the unit
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Attempts to mediate a settlement of the dispute were unsuccessful. The landlord wanted the tenancy to end and the tenant wanted the tenancy to continue.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged on the notice. Based on the testimony of both parties, I find that the landlord has raised two issues as the reason for the notice to end tenancy namely that the tenant is running a home based leather business and that the tenant is smoking inside the rental unit.

I find that the tenant was given a warning letter on May 18, 2017 and was asked to stop using the sewing machine, remove it from the rental unit, to stop smoking inside the rental unit and to repair smoke damage to the walls. The landlord gave the tenant ten days to rectify these matters.

The landlord carried out an inspection on May 29, 2017 and found that the matters were not remedied to her satisfaction. The landlord agreed that the smoke odour was less than before but stated that the sewing machine was still plugged in. The tenant agreed that the sewing machine was still plugged in but stated that he had stopped using the machine and was waiting for the outcome of this hearing.

Based on the evidence filed by the landlord and the contradictory testimony of the tenant, I find that the landlord has not provided sufficient evidence to support her testimony that the tenant is currently running a business out of the rental unit.

I further find that the landlord gave the tenant just 10 days to repair smoke damage to the walls and testified that the problem had lessened by the end of the 10 day period.

I accept that the tenant despite his disabilities wishes to better his situation by taking steps to become self-employed. However I also find that the tenant must prove to the landlord that the activity he intends to engage is not illegal, will not damage the rental unit and will not cause any disturbances to the landlord. I further find that the landlord has not provided sufficient evidence to support her testimony that the intended business is not permitted by the agricultural authorities and will cause damage to the rental unit.

Based on the above, I order the tenant to have the sewing machine unplugged from the electrical supply and stored in a box or in a manner that prevents its use, until the tenant provides the landlord with the required paperwork from the local municipality indicating that the operation of his sewing machine does not affect compliance with local by laws. I further order the tenant to comply with the tenancy agreement and not smoke inside the rental unit and ensure that smoke does not enter the unit.

I find that the landlord has not proven the reasons for the notice to end tenancy and I therefore allow the tenant's application and set aside the notice to end tenancy.

The tenant would be wise to refrain from using the sewing machine prior to getting the required approvals from the landlord and/or local governing bodies and from allowing smoke to enter the rental unit. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: August 02, 2017

Residential Tenancy Branch