



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 an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 *Act*.

Both the tenant and the landlord attended the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenant explained that a copy of the landlord’s 1 Month Notice to End Tenancy was provided to her in person on September 30, 2017. Pursuant to section 88 of the *Act*, the tenant is found to have been served with the landlord’s 1 Month Notice.

The landlord acknowledged receipt of the tenant’s Application for Dispute Resolution on November 10, 2017. Pursuant to section 89 of the *Act*, the landlord is found to have been served with the tenant’s Application for Dispute Resolution.

Issue(s) to be Decided

Can the tenant cancel a 1 Month Notice to End Tenancy?

Background and Evidence

Testimony provided to the hearing by the tenant explained that this tenancy began in April 2013. Rent is \$1,100.00 per month, and a security deposit of \$550.00 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord stated that she served the tenant with a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") because of issues related to the tenancy. Specifically, the reasons cited by the landlord on the 1 Month Notice were as follows:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.

The landlord explained that three events had led to the issuance of the 1 Month Notice. She said that the tenant had damaged the washer/dryer on two occasions, had clogged the toilet on two occasions and had caused noise which led to strata fines being levied on the landlord.

During the hearing, the landlord stated that the washer/dryer required replacement on two occasions after clothing had become stuck in the machines. Furthermore, the landlord explained that she was forced to replace the toilet on two occasions because a child's toy and a bottle cap had become lodged in them.

In addition to the items in the rental unit which required replacement, the landlord stated that she had received information from the strata that the tenant's rental unit had been subject to noise complaints from persons in the building. The landlord continued by stating that she was informed by the strata that a \$200.00 fine was to be levied against her because of these noise issues. The landlord could not provide any details concerning the noise, noting that she had only been informed of the issues via her strata.

The tenant disputed all aspects of the landlord's notice to end tenancy. She argued that the issues surrounding the replacement of the dryer/washer and toilet should be dismissed because they were accidents that were beyond her control. She explained that she did not make any concerted efforts to ever break the washer/dryer, that the machines were old to begin with, and the replacement machines were also purchased as used items. She explained that clothing became tangled in the washer and thought

this might have occurred due to the age of the machine as she said she did nothing out of the ordinary when she used it. Furthermore, she stated that the toilet which required replacement was clogged because of a children's toy which had unexpectedly fallen into it and become stuck. She said she did not know how this occurred but argued she was not personally the cause of the accident.

The tenant acknowledged receiving one noise complaint on February 28, 2017 but stated she had no knowledge of any other issues concerning noise in the rental unit. She explained that she has 4 children, all under the age of 7 years old. She stated that any noise which emanated from her apartment was a result of children playing in the apartment, and not the result of any partying or loud music.

Analysis

The landlord issued a 1 Month Notice because it was alleged that the tenant has; significantly interfered with or unreasonably disturbed another occupant, has put the landlord's property at significant risk and has caused extraordinary damage to the unit or property. I will examine these allegations individually starting with the issues surrounding noise complaints.

At the hearing, the landlord explained that she had received information from her strata that the tenant had caused disturbances in the apartment that had led to complaints being issued because of excessive noise. The landlord said that she was possibly subject to a \$200.00 fine because of this noise, but had yet to receive any formal penalty from the strata. I do not find that the landlord has sufficiently demonstrated that the tenant caused significant interference, or unreasonably disturbed any other persons in the rental building. By the landlord's own admission, she did not have any details surrounding these alleged noise complaints and was only made aware of them via the strata. The tenant stated that she had only received one formal noise complaint. I find that insufficient detail surrounding these claims of excessive noise to have been presented at the hearing to establish significant interference or unreasonable disturbances of others in the rental building. For these reasons, this portion of the landlord's application is dismissed.

The second portion of the landlord's 1 Month Notice concerns damage which occurred to the washer/dryer and the toilet. *Residential Tenancy Policy Guideline #1* examines the rights and responsibilities of both landlords and tenants regarding the residential premises. On page 1-3 it notes, "the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the

deliberate actions or neglect of the tenant.” During the hearing it was explained by the landlord that the washer/dryer were broken because of clothes that had become stuck and that the toilet was broken because of a child's toy and a bottle cap that had lodged in a pipe.

The cause of the damage to the washer/dryer is unclear but the tenant noted she did nothing out of the ordinary when she used it and thought the machine may have jammed because it was old and clothes became stuck in the machine. I find that the incidents related to the washer/dryer and the toilet were the result of an unfortunate set of circumstances that were beyond the control of the tenant. I do not find that the damage was caused by the tenant's deliberate actions or neglect. For these reasons, I find the landlord has failed to establish that the tenants' actions caused “extraordinary damage” or placed the landlord's property at “significant risk.” I dismiss this portion of the landlord's 1 Month Notice.

This tenant was successful in her application cancelling the landlord's 1 Month Notice to End Tenancy for Cause.

Conclusion

The landlord's 1 Month Notice is dismissed. This tenancy shall 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: December 20, 2017

Residential Tenancy Branch