



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On November 2, 2017, the Tenant submitted an Application for Dispute Resolution to cancel a 1 Month Notice to End Tenancy for Cause dated October 24, 2017, (the 1 Month Notice).

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.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?

Background and Evidence

Both parties testified that the Tenant moved in around October 1, 2015, and the tenancy is a month to month tenancy. Rent in the amount of \$933.30 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00.

The Landlord testified that the occupants who lived above the Tenant complained about the Tenants nephew being on the property. The Landlord submitted that there was an incident in March 2017, where the upstairs occupants were awoken early one morning to find police cars on the property. The Tenants nephew had attended the property and refused to leave, so the Tenant called police to remove him.

The Landlord submitted that the upstairs occupants installed a video camera and recorded the Tenant's nephew coming onto the property on a couple more occasions. The Landlord provided a link to video recordings showing the Tenant's nephew on the property. The Landlord submitted that the upstairs occupants complained that they did not feel comfortable with the Tenant's nephew being on the property.

The Landlord decided to end the tenancy by issuing a 1 Month Notice To End Tenancy For Cause.

The Landlord testified that she posted a 1 Month Notice To End Tenancy For Cause dated October 24, 2017, (the 1 Month Notice) on the Tenant's door. The reasons for ending the tenancy within the 1 Month Notice are:

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 engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*

The 1 Month 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 disputed the 1 Month Notice within the required timeframe.

The Tenant testified that the occupants who lived above her do not want her nephew on the property because he has a police record. She submitted that her nephew is homeless and has clinical depression.

The Tenant submitted that she called the police to have her nephew removed when he would not leave. She submitted that she told him to stay away from the house for a couple of months.

The Tenant submitted that she is part of her nephew's support system and that her nephew did not actually do anything wrong while attending the property.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that there is cause to end the tenancy based on the reasons in the Notice.

Based on the evidence and testimony before me, I find that the Landlord provided insufficient evidence to establish that the Tenant or a person permitted on the property by the Tenant, **significantly interfered with or unreasonably disturbed** another occupant or the Landlord. [my emphasis]

While I find that the upstairs occupants were concerned with the Tenant's nephew being on the property, the nephew did not do anything that amounts to a significant interference or an unreasonable disturbance to the occupants or Landlord. The video files show the Tenants nephew sitting by a tree and later entering the property to knock on the Tenant's door.

I also find that there is insufficient evidence from the Landlord that the Tenant or a person permitted on the property by the Tenant, engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord. The Landlord did not provide any evidence of illegal behavior on the property.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated October 24, 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 October 24, 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: January 17, 2018

Residential Tenancy Branch