



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, CNR

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated April 4, 2017
- b. An order to cancel a 10 day Notice to End Tenancy dated January 10, 2018

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The hearing was initially set for December 13, 2017. However it was adjourned with the consent of the landlord as the tenant was scheduled to give birth in the hospital around the date of the hearing.

I find that the one month Notice to End Tenancy was personally served on the Tenant on September 29, 2017. I find that the 10 day Notice to End Tenancy was personally served on the Tenant on January 20, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on October 4, 2017. I find that the Amendment to the Application for Dispute Resolution was personally served on the landlord on January 11, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated September 29, 2017?
- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated January 10, 2018?

Background and Evidence:

The tenancy began on December 1, 2014. The tenancy present rent is \$750 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$500 at the start of the tenancy.

Grounds for Termination:

The landlord has the burden of proof to establish sufficient cause to end the tenancy based on the grounds set out in the notice and evidence to the date of the one month Notice to End Tenancy. The one month Notice to End Tenancy dated September 29, 2017 identifies the following grounds:

- 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
 - jeopardize a lawful right or interest of another occupant or the landlord
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- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord seeks to end the tenancy based on the following evidence:

- The landlord has received a complaint from neighbouring tenants that in the late night/early morning she has received visits from an individual who attends the property several times per week for very short periods of time i.e. 1 – 3 minutes. The complainant told the landlord the visitor is a drug dealer. The landlord did not provide the evidence of this complainant as she/he wished to remain anonymous and feared for her/his safety.
- The tenant has engaged in confrontation behavioural with other tenants. The landlord referred to warning letters issued by the landlord dated January 24, 2017 and July 12, 2016 and e-mails or letters they received from complaining other tenants.
- The tenant was overheard swearing loudly at her children in a public area of the complex on September 28, 2017.
- The landlord testified the tenant has been engaged in an ongoing dispute with other residents of the complex that has deteriorated and is ongoing.

The tenant testified the person referred to by the landlord who was visiting is a long friend who was visiting for a short period of time either to borrow money or to repay money. The money used by the person was for the purpose of buying lunches.

The tenant did not give evidence in response to the other allegations. The landlord was given an opportunity to cross examine the tenant but chose not to do so.

Analysis:

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy based on the grounds set out in the Notice to End Tenancy for the following reasons:

- The landlord withdrew the 10 day Notice to End Tenancy. As a result I ordered that the 10 day Notice to End Tenancy be cancelled as withdrawn.
- The one month Notice to End Tenancy alleges the Tenant has engaged in an 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
 - jeopardize a lawful right or interest of another occupant or the landlord
- The landlord relies on a complaint from someone who wishes to remain anonymous that a known drug dealer is coming and going from the tenant's unit late at night. That person did not testify at the hearing or provide a letter outlining the evidence for the basis for this complaint. The tenant explained that he is an old friend who was either receiving or repaying a loan. I cannot conclude from the evidence presented that the tenant has engaged in an illegal activity. Even if the evidence of this anonymous witness was accepted, the mere fact that he regularly visits the tenant for short periods of time late at night is insufficient evidence to prove that the tenant has engaged in an illegal activity. The fact that a needle was found outside between the tenant unit and a neighbouring unit is not sufficient evidence to establish the tenant is engaged in illegal drug activity.
- The landlord presented complaint letters and supporting e-mails from other tenants about the tenant's confrontational behaviour with other tenants. The warning letter(s) given by the landlord are dated January 24, 2017 (8 months prior to the one month Notice to End Tenancy) and July 12, 2016 (14 months prior to the one month Notice to End Tenancy). The other tenants failed to attend the hearing and give first hand testimony of the problems they have encountered. There is insufficient evidence to establish that this alleged misconduct, even if proven amounts to "illegal activity" as alleged in the one month Notice to End Tenancy. In the circumstances I determined the landlord failed to prove that the tenant's misconduct is sufficient to end the tenancy based on the grounds set out in the Notice.
- The Notice to End Tenancy alleges the tenant has breached a material term of the tenancy agreement and has not corrected the breached within a reasonable time after being given written notice to do so. The letter issued a warning letter dated August 14, 2017 alleging illegal drug use. For the reasons set out above I determined the landlord failed to present sufficient evidence to prove this allegation.
- The letters from the landlord to the tenant dated January 24, 2017 and July 12, 2016 outline misconduct of the tenant in her dealings with other tenants. However, these letters do not clearly set out date in which the tenant must correct her behaviour. Further, the landlord failed to present sufficient evidence from other residents that the misbehavior is continuing.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy based on the grounds set out in the Notice to End Tenancy. As a result I ordered that the one month Notice to End Tenancy dated September 29, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The allegation of the tenant's misconduct is serious. However, an arbitrator must make his/her decision based on the evidence presented at the hearing. The tenant is put on notice that the results of this decision might very well have been different had the other residents testified at the hearing. .

This decision is final and binding on the parties.

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: March 13, 2018

Residential Tenancy Branch