



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order limiting or setting conditions on the landlord's right to enter the rental unit; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. The parties agree that the tenant's evidence has been provided to the landlord, all of which has been reviewed and is considered in this Decision. No evidence has been provided by the landlord.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to entering the rental unit?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on December 1, 2017 and expires on November 30, 2018 at which time the tenancy ends. The tenant still resides in the rental unit. Rent in the amount of \$500.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental

unit is one of two rooms which are both tenanted and share a common area including the kitchen. Another suite is also rented out which shares the entrance to the common area, and the landlord resides in the upper level of the rental property.

The landlord's agent further testified that the tenant was told at the beginning of the tenancy that there is an independent suite on the right side, which is not yet rented, and the tenant thinks it shouldn't be rented at all. The landlord showed the suite to a prospective tenant and the tenant didn't like the landlord entering the common area, and a lot of swearing took place. The tenant had the police attend and there was nothing significant that the landlord had done wrong. The other tenant, who has resided there for 3 or 4 years, has seizures and the landlord keeps an eye on him. A few times he has been found on the kitchen floor and an ambulance had to be called. The landlord has not entered the tenant's private room; only the common area which is shared and the main entrance is shared with 3 tenants.

The tenant has provided a statement as evidence, which he affirms is true to the best of his knowledge. It states, in part, that he had explained to the landlord and the landlord's spouse that there has to be a separate entrance from the outside to enter the other apartment, and that the tenant's rental unit could not be used as a conduit to enter that rental apartment; it's totally illegal, and the other apartment needs its own entrance. The tenant also testified that he understood when he moved in that there would only be himself and one other occupying the basement apartment, and no one in the private suite, and that he understood he was paying for shared accommodation, not just renting a room.

The kitchen area is a common area with another tenant and the landlord can't enter whenever she wants. The other unit is self-contained, but one has to go through the common area to get to it. The landlord should politely ask the tenant if the landlord can show it to prospective tenants.

No one has provided a copy of the tenancy agreement as evidence for this hearing, however the tenant also testified that he provided a copy of the Notice to end the tenancy to the Residential Tenancy Branch and does not know why they didn't provide it on the case management system for this hearing, and believed it had been uploaded.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the landlord has not

established what the reason for issuing it was, or that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and I cancel it.

Section 1 of the *Residential Tenancy Act* contains definitions:

"common area" means any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants.

No one has provided me with a copy of the tenancy agreement, however the parties agree that the kitchen and entrance are common areas, meaning that they are shared areas. The tenant may not prevent the landlord from renting the other suite, and a landlord may enter the area to show another rental unit to a prospective tenant. Therefore, the tenant's application for an order limiting or setting conditions on the landlord's right to enter the common area cannot succeed. However, the landlord may not enter the private room of the tenant except in accordance with Section 29:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The tenant testified that the landlord has not entered the private room of the tenant, and therefore, the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement is dismissed.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues.

The balance of the tenant's application is hereby dismissed.

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 23, 2018

Residential Tenancy Branch