



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application made October 1, 2018 by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that the Tenant has incorrectly named the Landlord’s legal counsel as the Landlord. The Landlord states that the Landlord is a limited business entity and provides the correct name. The Tenant agrees that the application should be amended to set out the name of the Landlord as given by the Landlord. Given this consent I amend the application to set out the name of the limited business entity as provided by the Landlord.

Issue(s) to be Decided

Is the notice to end tenancy valid for the stated reason?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed facts: The tenancy started in 2011. Rent of \$450.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$225.00 as a security deposit. On September 21, 2018 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the "Notice"). The stated reason for the Notice is that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk. The details section of the Notice notes excessive combustibles, restricted entrance and exit, risk of fire and risk of pest infestation.

The Landlord states that prior to issuing the Notice the unit was not inspected by any fire department or city health official. The Landlord states that on June 26, 2018 the Tenant refused a pest control person entry into the unit to inspection and to treat the unit for pests, specifically cockroaches. The Landlord states that the unit next to the Tenant's unit reported cockroaches. The Landlord states that they have no evidence that the Tenant has pests in her unit and that the Tenant has never reported any pests. The Landlord states that none of the other adjoining or close units have reported pests.

The Landlord states that on September 7, 2018 the unit was observed by management as being cluttered and that the Tenant was given a verbal warning to correct the situation. The Landlord states that he saw the unit on September 21, 2018 after which the Landlord served the Tenant with the Notice and a letter. The Landlord confirms that the letter indicates that the Tenant had until September 30, 2018 to clear the room of clutter. The Landlord states that the Tenant's room was so cluttered that the floor could not be seen, the door would not open and that the unit was piled with clothing, bikes and other items. The Landlord states that these are the excessive combustible items referred to in the Notice. The Landlord states that the Tenant's unit was inspected on October 8, 2018 with a little progress noted. The Landlord states that another inspection occurred on October 16, 2018 and that no further progress was made.

The Landlord states that his belief that the Tenant's unit is causing a risk of fire is based on the Landlord's inability to see the floor of the unit. The Landlord states that he is qualified to determine such a risk given the Landlord's education as a mechanical engineer and his experience. The Landlord states that the fire department was not called to inspect the unit as the Landlord felt that the department would immediately shut down the unit and that the Landlord wanted to work with the Tenant to get her to comply instead of calling in these authorities. The Landlord states that when they inspected the unit on October 16, 2018 they discovered that the Tenant has removed the sink. The Landlord states that a photo of this was provided as evidence. The Landlord states that a video was taken on September 21, 2018. It is noted that this video was not provided as evidence. The Landlord provides on photo from September 21, 2018 taken at the door of the unit. The Landlord provides photos taken on October 16, 2018.

The Tenant does not dispute that there were some problems with her entrance and exit at the time the Notice was served. The Tenant states that her unit has been worked on and that "lots" of improvements were made. The Tenant's advocate argues that the Tenant encountered a lack of clarity and expectations from the Landlord with largely unclear directions for the Tenant to follow. The Advocate argues that the Landlord provided nothing for measurement and that the time lines were confusing given the issuance of the Notice prior to the date that the Tenant was to remedy the state of the unit. The Advocate argues that the Landlord was unclear and confusing with its evidence. The Advocate argues that the unit is a lot less cluttered and that the Tenant has made great strides in remedying the clutter. The Advocate argues that the sink fell to the floor from disrepair and that although the Tenant complained to the Landlord nothing has been done to repair the sink. The Tenant states that the doors are open for access and exit and that the window is clear. The Tenant states that there are no pests in the unit and that the Landlord has never raised any issue with the state of the Tenant's unit during the tenancy. The Advocate argues that the Tenant will be faced with a significant chance of homelessness if the Notice is upheld.

Analysis

Section 47(1)(d)(iii) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy where the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk. The Landlord's letter dated September 21, 2018 indicates that it is the belief of the pest control company that the unit is cluttered. I take this to mean that it is too cluttered for the purposes of conducting a pest inspection. This same letter gives the Tenant until September 30, 2018 to remedy the situation. There is no evidence that the Tenant's unit has any pests or that the Tenant is acting in a manner to attract pests into the unit or to the building. While it may be that the Tenant refused entry for the purpose of a pest inspection, the evidence indicates that this was a one-time refusal, apparently from June 2018 and I note that the Notice does not allege that the Tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The Landlord's supporting evidence of the state of the unit prior to the service of the Notice is limited to one dark photo at the unit entry. This indicates that the entrance to the unit was not obstructed. Despite the Landlord's evidence that the Tenant was informed on September 7, 2018 that the unit was cluttered it is unclear whether the concern at this time over clutter was related to pest management or a fire hazard. The Landlord's evidence is that the Tenant was given to September 30, 2018 to declutter the unit. This indicates that the situation could be related to the pest control efforts. While the photos taken October 16, 2018 certainly show a lot of belongings and perhaps a risk I consider the Tenant's consistent evidence that the entrance, exit and windows are not blocked. The Landlord has not provided any supporting evidence from a fire inspector that the unit is or was inspected and found to be a fire hazard. There is no evidence of any materials present in the unit or any habits or actions of the Tenant that could reasonably be anticipated to start or accelerate a fire. There is no evidence that despite

the long term tenancy the Tenant's unit was ever thought to be a fire hazard prior to the Tenant's refusal of the pest inspection.

For the above reasons, I find on a balance of probabilities that the Landlord has not provided sufficient evidence that the Tenant has put the Landlord's property at significant risk. I find therefore that the Notice is not valid for the stated reason and that the Tenant is entitled to its cancellation. The tenancy continues.

Conclusion

The Notice is cancelled and of no effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 14, 2018

Residential Tenancy Branch