



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, LA, OLC, MNDC, FF

Introduction

On January 10, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a 1 Month Notice to End Tenancy for Cause dated January 7, 2019. The Tenant has also applied to suspend or set conditions on the Landlords right to enter the rental unit; for authorization to change the locks of the unit; and for the Landlords to comply with the Act, Regulation, or tenancy agreement. On January 16, 2019, the Tenant amended her application to include a monetary claim in the amount of \$11,078.29.

The matter was set as a teleconference hearing. The Landlord and Tenant 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.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the Landlord has sufficient cause to end the tenancy. The Tenant's claim for monetary compensation is dismissed with leave to reapply.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The Landlords and Tenant both testified that the tenancy began on June 1, 2018, and is on a month to month basis. Rent in the amount of \$900.00 is to be paid to the Landlords by the first day of each month. The Tenant paid the Landlords a security deposit in the amount of \$450.00. A copy of the tenancy agreement was provided.

The Landlords issued the Tenant a One Month Notice to End Tenancy For Cause dated January 7, 2019 ("the 1 Month Notice").

The Landlords selected the following reasons for ending the tenancy in the 1 Month Notice:

Tenant or a person permitted on the property by the Tenant has:

- *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
- *Put the Landlord's property at significant risk.*

The Landlords provided testimony regarding the following:

- The Tenant is in breach of the tenancy agreement due to her turning off the programming of the bathroom exhaust fan which seriously jeopardized the health or safety or lawful right of the Landlord.
- The Tenant put the Landlord's property at risk by restricting the Landlords right to enter the rental unit in an emergency situation.
- The Tenant put the Landlord's property at risk by causing smoke and a burning smell in the unit

The Landlords testified that a term of the tenancy agreement provides that the Tenant is not to adjust the exhaust fan settings. The Landlord testified that in September 2018 the Landlord inspected the rental unit and found that the Tenant had turned off the programming. The Landlord testified that in early January 2019, the Landlord entered the rental unit to reprogram the exhaust fan.

The Landlords testified that on January 4, 2019, at 6:00 pm the Tenant reported that she had noticed there was water on the bathroom floor the day prior. In addition the Tenant informed the Landlord that the exhaust fan required reprogramming. The Landlord informed the Tenant that they would investigate the water and requested to enter the unit at around 9:00 - 9:30 pm. The Landlord believed it was an immediate situation. The Landlord testified that the Tenant said "no" to the requested entry at 9:00 - 9:30 pm. The Landlord testified that she then asked to enter the unit on January 5, 2019, and the Tenant again said "no". The Tenant then agreed for the Landlord to enter the unit to reprogram the exhaust fan. The Landlord entered the unit on January 4, 2019, and reprogrammed the exhaust fan. The Landlord testified that she did not notice any water on the bathroom floor when she entered the bathroom to reprogram the fan.

The Landlord entered the rental unit on January 6, 2019, after providing the Tenant with a 24 hour written notice of entry. The Landlord testified that the bathroom was inspected and there was no water ingress into the home. The Landlord submitted that any water came from inside the suite.

The Landlord submitted that the report of water in the unit was an emergency situation and the Tenant restricted their access to enter the unit which put the Landlord's property at risk.

With respect to the Landlords concern regarding a burning smell, the Landlord testified that she noticed a burning smell while in the laundry room. The Landlord testified that she contacted the Tenant who informed her that she was seasoning a cast iron pan. The Landlord submitted that this put the Landlord's property at risk.

In response, the Tenant testified that she did not change the settings on the bathroom exhaust fan. She testified that when the power goes off in the unit the fan needs to be reprogrammed. She testified that the programming needed to be reset on a couple of occasions which requires the Landlord to reprogram it. She testified that on one occasion the fan was continuously running so she hit the override to button to turn it off to stop the fan noise from disturbing the Landlord. The Tenant acknowledged that there was one occasion where she did accidentally leave the bathroom fan running overnight.

With respect to the water in the bathroom, the Tenant testified that there was a small amount of water on the floor. She testified that she let the Landlord know because she felt it was important. She testified that she asked the Landlord to come down at 6:00 pm but the Landlord was reluctant. She testified that the female Landlord refused to

come down to investigate the matter until the Tenant mentioned that the exhaust fan needed to be reprogrammed.

The Tenant testified that the male Landlord called her at 10:00 pm and asked if he could come down. She testified that she informed him that the water had been cleaned up. The Tenant testified that there was no more water and no risk. The Tenant testified that she was feeling bombarded by the Landlords behavior and wanted to enforce her rights under the Act to require the Landlord to issue a proper notice of entry.

With respect to the burning smell the Tenant testified that she was seasoning a cast iron pan and she coated it with oil and put it in the oven at 450 degrees. She testified that she had the exhaust fan on to deal with any smoke. She testified that the Landlord contacted her and she provided the Landlord an explanation. The Tenant submitted that this was not an incident.

The Tenant testified that she gave the Landlord written notice to end the tenancy effective February 28, 2019. The Tenant wants to proceed with her application to dispute the 1 Month Notice because she feels the Landlord has no grounds to end the tenancy for cause.

The Landlords acknowledged that on January 28, 2019, they received the Tenant's written notice to end the tenancy effective February 28, 2019.

Analysis

In the matter before me, the Landlord has the onus to prove that there are sufficient reason(s) to end the tenancy. Based on the evidence and testimony before me, I make the following findings:

I have considered whether or not the Tenant has seriously jeopardized the health safety or lawful right of the Landlord and whether or not the Tenant has put the Landlords property at significant risk.

I accept the Tenant's testimony that the bathroom exhaust fan needs to be reprogrammed by the Landlord on occasions where the power goes out. While I find that the Tenant left the exhaust fan on overnight, and this may be a breach of a term of tenancy, the issue is not serious enough to warrant a finding that the Tenant seriously jeopardized the health or safety or lawful right of the Landlord.

With respect to the Tenants report of water on the floor, I find that the Tenant took appropriate action by reporting that she noticed water on the bathroom floor. The Landlord attended the unit shortly after it was reported and she testified that she noticed no water present.

I find that the Landlord had the right to follow up on the report of water; however, since the Landlord did enter the unit and observed there was no water present, I find that the issue was not urgent. If the situation had been an actual emergency and the Tenant had denied access, and the delay of entering the unit resulted in additional damage, the Tenant could be found to have put the Landlord's property at significant risk. In this case, I find that the Tenant had the right to require the Landlord to provide a 24 written notice of entry as provided under section 29 of the Act. The Tenant did not restrict the Landlords right of entry because the issue was not an emergency.

With respect to the burning smell, there is insufficient evidence from the Landlord that the Tenant's actions of seasoning a cast iron pot in the oven put the Landlord's property at significant risk. The Tenant was in the unit and I accept her testimony that the kitchen exhaust fan was running.

I find that there is insufficient evidence from the Landlord to support that the Tenant seriously jeopardized the health or safety or lawful right of the Landlord or put the Landlord's property at significant risk. The One Month Notice to End Tenancy for Cause, dated January 7, 2019, is set aside.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with her application to set aside the 1 Month Notice. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$100.00. For enforcement, this monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant's application is successful. The One Month Notice To End Tenancy For Cause dated January 7, 2019, is cancelled.

The tenancy will continue until ended in accordance with the Act.

The Tenant is at liberty to reapply for her claims of monetary compensation that were dismissed with leave.

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: February 27, 2019

Residential Tenancy Branch