



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to have the Notice to End Tenancy cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order to suspend or set conditions on the landlords' right to entry?

Background and Evidence

The landlord gave the following testimony. The landlord testified that this month to month tenancy began on September 1, 2018 with a monthly rent of \$650.00 due on the first of the month. The tenant rents a room in a shared space. The landlord testified that

he issued a One Month Notice to End Tenancy for Cause on January 28, 2019 for the following reasons:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

The landlord testified that the tenant has “no respect for other tenants or the common areas”. The landlord testified that that the tenant’s room is “a pig sty”. The landlord testified that the tenant never cleans up after himself and leaves a mess for the others to clean up. The landlord testified that the tenant has left a door open all winter to allow the tenants’ cat in and out which in turn, has driven up the landlords heating costs. The landlord requests an order of possession.

The tenant gave the following testimony. The tenant adamantly disputes the landlords’ claims. The tenant testified that he only left the door open on one or two occasions for the cat to come in from the very cold weather. The tenant testified that all the tenants leave a mess and not just him, but eventually it’s cleaned up.

Analysis

When a landlord issues a notice under section 47 of the Act they bear the responsibility in providing sufficient evidence in issuing the notice. The landlord cited several different reasons he wishes to end the tenancy, however I find that they are more of a nuisance as opposed to a “significant or unreasonable disturbance”. It is apparent from the testimony of the landlord that there are issues between the tenant and the landlord. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with.

In regards to the tenant leaving the door open and incurring higher heating costs, the tenant testified that he usually turns the heat down in the unit and that the door was left open for the cat on only “one or two occasions”. The landlord was unable to provide sufficient evidence that the door was open for the entire winter as claimed or who had left it open. Based on the insufficient evidence before me at this time, I find that the

landlord has not provided sufficient evidence on any of the grounds he cited to end the tenancy, as a result; I set aside the One Month Notice to End Tenancy for Cause.

The tenant was seeking an order to suspend or set conditions on the landlords' ability to enter the unit. The tenant stated that the landlord entered his unit without notice on "at least 30 to 40 times". The landlord adamantly disputed this claim. The landlord testified that the tenant is almost always home and that he has not had the need to enter the unit as alleged by the tenant. Based on the insufficient evidence before me, the tenant has not satisfied me that an order to suspend or limit the landlords' right to enter the unit is required, accordingly; I dismiss this portion of the tenants' application.

Conclusion

The One Month Notice to End Tenancy for Cause dated January 28, 2019 with an effective date of February 28, 2019 is set aside, it is of no effect or force. The tenancy continues.

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 22, 2019

Residential Tenancy Branch