



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTIVE SUPPORT AGAINST
POVERTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Preliminary matter

At the start of the conference call there was a discussion if the tenancy was still in effect because the Tenant is not living in the rental unit. The rental unit is under repairs so it is uninhabitable and the Tenant is living elsewhere. As the Notice to End Tenancy is dated August 23, 2019 and the Tenant's application is dated August 29, 2019 which is within the legislated guidelines to dispute a One Month Notice to End Tenancy for Cause; I find the tenancy is in effect and the Tenant has the right to dispute the Notice to End Tenancy.

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on September 5, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on October 5, 2018 as a month to month tenancy. Market rent is \$1,397.00 but the Tenant is required to pay a subsidized rent of \$375.00 per month, payable on the 1st day of each month. The Tenant paid a security deposit of \$300.00 on October 5, 2018.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated August 23, 2019. She served the Notice on August 23, 2019 by posting the Notice on the door of the Tenant's rental unit. The Effective Vacancy date on the Notice is September 30, 2019. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Landlord continued to say that there was a water incident on August 17, 2019 resulting from a clogged toilet in the Tenant's rental unit that flooded the Tenant's unit, the unit below and the kitchen area on the ground floor. One of the Landlord's employees D.N. went to the Tenant's room to investigate where the water was coming from and she found the Tenant sitting on the bed and there was an inch of water in the rent unit. Witness D.N. said the Tenant was confused. The Landlord's maintenance man D.P later went to the unit to discover what clogged the toilet and to repair the toilet. Witness D.P. said the toilet was clogged with a plastic knife that was catching things and clogging the toilet. The Landlord said there was extensive damage to the rental complex. Following the incident the Landlord offered the Tenant accommodation in the shelter facility and the tenant from the second floor was moved to an empty rental unit. The Landlord said there was only one empty rental unit so the tenant that did not cause the issue was given the empty unit.

The Landlord said they issued the 1 Month Notice to End Tenancy first because the Tenant caused the clog in the toilet by putting the plastic knife in the toilet and secondly because the Tenant did not notify the Landlord there was a problem when she saw the water in her rental unit. The Landlord support their application with the inspection report, photographs of the damage, price quotes to repair the damage and a narrative of the events.

The Tenant's advocate said the Tenant has health issues that compromise her ability to deal with things and allowing this incident to happen is very regrettable, but the Tenant is a responsible and a good tenant.

The Tenant said there no way she would put anything in the toilet because this is her home and she does not want to leave it. The Tenant continued to say that she had been at the doctors and had just come home when she saw the water on the floor. Because of her health issues she was trying to catch her breath and it took her approximately half an hour before D.N. came in and found the water leak. The Tenant said she was confused, scared and didn't know what to do. Consequently the Tenant did nothing to alert the Landlord that the toilet was over flowing. The Tenant continued

to say that the maintenance man D.P. had come to her unit 7 times previously to unclog and repair the toilet, so it was not her fault the toilet clogged.

Witness D.P. said he had unclogged the toilet once for the Tenant approximately 3 weeks to a month ago. Witness D.P. said it was only one time he had worked on the Tenant's toilet.

The Tenant's Advocate asked the Landlord why they didn't give the Tenant a different rental unit when hers was uninhabitable.

The Landlord said they didn't have an empty rental unit and they did offer the Tenant a semi private space in the shelter that was wheel chair accessible. The Advocate said the Tenant's medical condition made her confused and scared so she did not know how to react to the water leak situation.

The Landlord said in closing that they want to end the tenancy as they believe the Tenant caused the water problem and the Tenant did not advise the Landlord about the issue until it was too late. The Landlord said they will provide shelter accommodation for the Tenant until she can find a new rental unit if the tenancy ends. The Landlord questioned if the Tenant has the ability to live in an independent living situation.

The Tenant said in closing if she is evicted she will be homeless and on the street, which would be very difficult for her. The Advocate said the Tenant has been a responsible tenant and her situation should be taken into account in this situation.

Analysis

Section 47 of the Act says a landlord may end a tenancy by giving notice to end tenancy if one or more of the following:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i)has caused or is likely to cause damage to the landlord's property,

(ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

I accept the Landlord evidence and testimony that the Tenant caused the clog in the toilet as no other explanation was give and that the Tenant failed to notify the Landlord as soon as she saw the water issue in her rental unit. I regret the Tenant's medical condition, but there is no evidence submitted that shows the Tenant was unable to alert the Landlord of the water issue in her rental unit. Consequently, I find the Landlord has met the test to show the Tenant has interfere, adversely affected and jeopardized other tenants as well as the Tenant put the Landlord's property at significant risk. I find the Tenant has not established grounds to cancel the One Month Notice to End Tenancy for Cause dated August 23, 2019. Therefore, I dismiss the Tenant's request to cancel the One Month Notice to End Tenancy for Cause dated August 23, 2019 and pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective 2 days after service of the Order on the Tenant. I find this as the effective vacancy date of September 30, 2019 is well past and the unit is uninhabitable.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective 2 days after service on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British

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: October 28, 2019

Residential Tenancy Branch