



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 4, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated February 1, 2020 ("the One Month Notice").

The Tenant, the Tenant's Legal Advocate S.C., and the Landlord's Agent J.M. attended the hearing at the appointed date and time.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence packages. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated February 1, 2020 pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2012. Rent in the amount of \$640.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$300.00.

The Landlord's Agent stated that the Landlord served the Tenant in person with the One Month Notice on February 1, 2020 with an effective vacancy date of March 2, 2020. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice is;

"The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk."

The Landlord's Agent stated that the Tenant had some concerns regarding some staining on the ceiling of the rental unit and thought it may have been caused by a leaking roof. The Landlord's Agent stated that the Tenant employed a roofing company to attend and inspect the rental unit for a possible leak causing the staining. The Landlord's Agent stated that the roofing company found no active water leaks, however, they did note that there was a strong smell of cigarette smoke throughout the rental unit as well as visible staining on the walls and ceiling due to smoking in the residence.

The Landlord's Agent stated that the Tenant is not permitted to smoke in her rental unit and provided a portion of the tenancy agreement which stipulates that smoking is not permitted in the rental unit. As such, the Landlord is seeking to end the tenancy. The Landlord provided a copy of the inspection report which reflects the roofer's observations in support.

In response, the Tenant stated that she has never smoked in her rental unit at any point during her tenancy. The Tenant stated that the smell of smoke could have been a result

of other occupants smoking outside ear her doorway. The Tenant stated that the previous occupants smoked heavily in the rental unit and that the Landlord has not painted the rental unit since.

During the hearing, the Landlord's Agent stated that there have been no concerns reported to the Landlord with respect to the Tenant smoking in her rental unit throughout her tenancy. Furthermore, the Landlord's Agent stated that he has attended the rental unit on several occasions to replace the carpet, repair the toilet and bathtub and did not notice any smoke smell or staining from smoking in the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated on February 1, 2020 with an effective vacancy date of March 2, 2020. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord is seeking to end the tenancy on the basis that the Tenant has put the Landlord's property at significant risk. The Landlord's Agent relied on a roofer's inspection report which indicated that there was a strong smell of cigarette smoke throughout the rental unit as well as visible staining on the walls and ceiling due to smoking in the residence.

The Tenant denied smoking in her rental unit throughout her tenancy. The Tenant stated that the smell could have been caused by other occupants smoking outside the Tenant's rental unit. Furthermore, the Tenant stated that the previous occupants smoked heavily in the rental unit which had not been repainted prior to her tenancy.

During the hearing, the Landlord's Agent stated that after attending the rental unit throughout the tenancy, he has ever smelled smoke or seen staining from smoking in the rental unit. As such, I find that the Landlord has provided insufficient evidence to

demonstrate that the Tenant has been smoking in the rental unit, putting the Landlord's property at significant risk to the extent that the tenancy should end.

In light of the above, I cancel the One Month Notice, dated February 1, 2020. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated February 1, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

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: April 14, 2020

Residential Tenancy Branch