



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Queenswood
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, MNDC

Introduction

This hearing dealt with an application by the tenant pursuant to sections 47 and 72 of the *Residential Tenancy Act*. The tenant applied for an order to set aside a notice to end tenancy for cause and for a monetary order to recover loss under the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by their agent. The tenants represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for a monetary order for loss under the *Act*. As this section of the tenant's application is unrelated to the main section, which is to cancel the one-month notice, I dismiss this section of the tenant's claim with leave to reapply. Accordingly, this hearing only dealt with the tenant's application to set aside the notice to end tenancy.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The background facts are generally undisputed. The tenancy began on August 01, 2016. The monthly rent is \$879.00 payable on the first of each month.

On August 25, 2020, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner. The notice to end tenancy alleges that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant and
- has breached a term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord stated that she started managing the rental complex approximately 8 months ago and found that the tenant was using a locker that was designated to different unit. The landlord requested the tenant to remove his items from the locker and informed him that there was no locker assigned to his unit. The tenant refused to do so which prompted the landlord to serve the tenant with this notice to end tenancy.

The tenant stated that when he moved into the rental unit four years ago, he was informed by the person who managed the rental units at that time, that he could use a locker when it became available and it was on a first come first served basis. The tenant stated that approximately two and a half years ago, the locker he is currently using became available and he has been using it since then, without any problems until management of the rental complex changed hands.

The landlord stated that there is no provision in the tenancy agreement for locker space and therefore the tenant is not entitled to use one.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant and has breached a term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that by using the locker assigned to another unit, the tenant was interfering with the occupant of the other unit. The landlord added that there is no reference to storage lockers in the tenancy agreement. The tenant testified that he acquired one based on the instructions of the previous manager.

Therefore, I find that the tenant has not interfered with another tenant or breached a term of the tenancy agreement.

Based on all the evidence before me, I find that the tenant has used this locker without problems for two and a half years. He was permitted to do so by the agent who managed the rental units at that time.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to object or order the tenant to vacate the locker in a timely fashion and the fact that the tenant continued to have the use of the locker for two and a half years, without problem, pursuant to the doctrine of laches, I find that the landlord has not proven her case.

Based on the above, I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Accordingly, I allow the tenant's application and set aside the landlord's notice to end tenancy dated August 25, 2020. As a result, the tenancy shall continue in accordance with its original terms.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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 08, 2020

Residential Tenancy Branch