



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On May 24, 2022, the tenant applied for an order to cancel a One Month Notice to End Tenancy for Cause, dated May 19, 2022, (the One Month Notice).

The hearing was attended by the tenant's agent (BU) and the landlord. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings, and Rule 7.4 requiring evidence to be presented.

The parties confirmed they received each other's respective materials.

Issues to be Decided

Is the tenant entitled to an order to cancel the One Month Notice, and if not, is the landlord entitled to an order of possession?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began October 1, 2013; rent is \$584.25, due on the first of the month; and the tenant paid a security deposit of \$257.50, which the landlord still holds.

A copy of the One Month Notice was submitted as evidence. The landlord testified she served the One Month Notice on the tenant in person on May 20, 2022, and BU testified the tenant received it as described.

The One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form.

The One Month Notice indicates the reason for the Notice is that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The Details of the Events section of the One Month Notice refers to the tenant being asked several time to clean the unit, and states that a warning letter was written regarding the damage to his apartment. The section states that on the last inspection there was dirt ground into the kitchen floor, the kitchen sink is rusted, and the flooring around the toilet will need to be replaced, "with possible sub floor damage."

The landlord testified that the tenant has caused several plumbing issues by putting grease down the sink.

The landlord testified that when the tenant has an issue with the unit, he does not tell the landlord, which is problematic.

The landlord testified that the kitchen sink has rusted, there is dirt ground into the kitchen floor, and the toilet, though clean on inspection, is surrounded by urine around its base. The landlord testified that she did not know if urine has caused the problem around the toilet, "but there is the potential." The landlord did not describe what the problem was around the toilet.

The landlord testified that she has told and shown the tenant how to keep the rental unit clean, and told him the standard of cleanliness required.

The landlord testified that the bathroom needed to be redone because it was not kept up sufficiently by the tenant. The landlord did not specify what damages required the bathroom to be renovated.

BU testified that she disagreed with the landlord's testimony regarding the lack of cleanliness of the tenant's unit; BU stated she has photos that show the state of the unit "is not out of control."

BU asked the landlord about the standard of cleanliness she is using; the landlord testified that she has 21 other units, which she inspects, and that "no other tenant has

done this amount of damage.” The landlord stated that other tenants do not have damage to their sinks or flooring, and do not have urine around their toilets.

The landlord testified that the tenant is not getting the level of community support he needs, and “is falling through the cracks.”

Analysis

Based on the testimony of those present, I find the landlord served the tenant the One Month Notice on May 20, 2022, in accordance with section 88 of the Act, and that the tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

Section 47(1)(d)(iii) of the Act states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord has provided affirmed testimony that the tenant is not keeping his unit clean enough, which has resulted in dirt being ground into the kitchen floor, the kitchen sink rusting, the presence of urine around the base of the toilet, and unspecified other damages to the unit.

Based on the evidence before me, and on a balance of probabilities, I find the landlord is not entitled to an order of possession because the landlord has failed to demonstrate that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. I would consider actions such as turning on a stove burner,

then leaving it unattended; or making alterations to a gas or electrical system in the property, examples of those which would put the landlord's property at significant risk.

Therefore, the One Month Notice is cancelled.

Conclusion

The tenant's application is granted. The tenancy will continue until it is 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: October 04, 2022

Residential Tenancy Branch