



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, OPT, AS

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for landlord's use of property, to obtain an order of possession for the rental unit and to allow a tenant to assign or sublet

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began November 2010.

On March 31, 2012 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

On March 31, 2012 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

The tenant has:

- allowed an unreasonable number of occupants in the unit/site.
- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- caused extraordinary damage to the unit/site or property/park.
- assigned or sublet the rental unit/site without landlord's written consent.

The tenant testified that she rents a 2 bedroom apartment and that when she moved in she was told the utilities would be \$40.00 every 2 months in the summer and \$60.00 every 2

months in the winter. The tenant stated that her utility bills have been well over \$100.00 in the winter which put her behind in paying them.

The tenant stated that she repeatedly asked the landlord if she could get a roommate to help pay the rent however he has always refused this request. The tenant stated that many of the other 2 bedroom units in the building have 2 or more occupants. The landlord testified that in the past he has refused allowing the tenant to have a roommate as the people the tenant proposed were known to the landlord as being very problematic. The tenant stated that she does currently have a roommate.

The tenant also stated that there is no damage in her rental unit and the landlord's allegations of her playing drums and being loud at night are false. The landlord stated that since the start of the tenancy he has had repeated complaints about noise from the tenant's rental unit, yelling and swearing from the balcony, police in attendance and that he has spoken to the tenant on more than one occasion about the complaints. The tenant responded by stating that it is not her but the people across the hall from her that create the disturbances in the building. The landlord did acknowledge that he had not given the tenant any warning letters to correct any alleged bad behaviour.

The landlord stated that his daughter will be moving into the rental unit with her son when the tenant vacates. The tenant responded by stating that the daughter lives in a house on the landlord's property and why would she now move into an apartment. The landlord stated that the property that his daughter currently occupies is an old shack and the apartment would be more suitable.

The tenant stated that she had been served the 2 month notice by posting to the door and that she was not in receipt of the notice until April 1, 2012. The tenant stated that the end date of the notice should then be June 30, 2012 and not May 31, 2012 as noted on the notice.

Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the 1 Month Notice to End Tenancy for Cause.

The onus or burden of proof is on the party making the claim and in this case the landlord has claimed there is cause to end this tenancy and the tenant does not agree. The landlord must prove he has cause to end this tenancy and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

While the landlord refers to continued problems with this tenancy, the landlord has not clearly proven that it is the tenant who is disturbing other occupants in the building, that there is damage in the rental unit or that the tenant currently has an unreasonable number of people in the rental unit. With no statements from other tenants or warning letters entered into

evidence and conflicting testimony from the parties, I find that the landlord has not met the burden of proving their case. Therefore the landlord's 1 Month Notice to End Tenancy for Cause is hereby set aside.

As this is a 2 bedroom rental unit and many of the 2 bedroom units in the building have 2 or more occupants, I find it unreasonable for the landlord to not allow the tenant to have a roommate. The tenant's current roommate is to fill out a tenancy agreement with the landlord so that the landlord knows who is occupying the rental unit, no later than May 15, 2012.

Based on the documentary evidence and testimony of the parties I find that there is evidence to uphold the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The landlord has in 'good faith' testified that his daughter and her son will be moving into the rental unit when the tenant vacates and the landlord clearly understands that the tenant may come back to this office if the requirements as outlined in the *Act* for 'landlord's use of property' are not met.

As the notice to end tenancy was posted to the tenant's door however and the tenant not in receipt of the notice until April 1, 2012, **the effective end date of the notice self corrects to June 30, 2012.** The tenant will not be required to pay the June 2012 rent as this will act as the 1 month's rent compensation that the tenant is entitled to per the *Act* when this type of notice is given.

Therefore the tenancy will end June 30, 2012.

Conclusion

The landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2012 is upheld with the result that the tenancy will end June 30, 2012

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 30, 2012

Residential Tenancy Branch