



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amacon Property Management Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This Hearing dealt with the Tenant's application filed June 5, 2014, to cancel a *One Month Notice to End Tenancy for Cause* issued May 31, 2014 (the Notice).

The parties gave affirmed testimony at the Hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

There were no issues with respect to service of the Notice of Hearing documents, or exchange of evidence. The Landlord's agent acknowledged being served with the Notice of Hearing documents on July 5, 2014. The Tenant acknowledged receiving copies of the Landlord's documentary evidence on July 17, 2014.

Issue to be Decided

- Should the Notice be cancelled?

Background and Evidence

This tenancy began in October, 2013. On May 31, 2014, the Landlord's agent served the Tenant with the Notice by slipping a copy under the Tenant's door, and by posting another copy on the Tenant's door. The Tenant acknowledged receiving the Notice on May 31, 2014.

The Landlord's agent BK stated that she received some text messages from the Tenant on May 30, 2014, at 5:15 p.m. The Landlord provided copies of the text messages in evidence. The Tenant was complaining about a railing giving out on his porch.

BK testified that the Tenant was being unreasonable because he demanded that it be fixed within 24 hours, and at the same time demanded that he be provided with 24 hour notice of access.

BK stated that the Tenant was advised that he would have to fill out a written request for the repairs to be done.

BK testified that the Tenant smokes marijuana, which is illegal. She stated that the Tenant "must have jumped against" the railing and that it could have fallen down, injuring others.

BK stated that another agent, DT, was the person who filled out the Notice and that they both signed it. She said that DT had more particulars with respect to the Notice but that she was unavailable to give testimony.

The Tenant denied that he damaged the railing. He stated that the copies of the texts that the Landlord provided in evidence were edited and were not complete versions of the texts. BK denied that the text messages had been edited.

Analysis

When a landlord seeks to end a tenancy, **the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the notice to end tenancy.**

The Notice indicates the following reasons for ending the tenancy:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property;
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and
- jeopardize a lawful right or interest of another occupant or the landlord.

In this case, the Tenant denied the allegations and I find that the Landlord has not provided sufficient evidence to support the Notice. There is insufficient evidence that the Tenant broke the railing. There is insufficient evidence that the Tenant has engaged in illegal activity. The onus is on the Landlord, who must provide its best evidence in support of the Notice. I find that the Notice is not a valid notice to end the tenancy and it is canceled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

I am concerned about the tone of the text messages. I recommend that the parties treat each other with respect. I also note that it is not unreasonable for the Landlord to require that requests for repairs be put in writing.

Conclusion

The Notice to End Tenancy issued May 31, 2014, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of 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: August 18, 2014

Residential Tenancy Branch

