



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC,

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated June 19, 2014.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had caused extraordinary damage to the unit and that the tenant failed to do required repairs to the damage.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the One-Month Notice to End Tenancy for Cause dated May 19, 2014, was in evidence showing an effective date of July 31, 2014.

The tenancy began approximately 2 years ago and the tenant occupies a room in a house attached to an adjacent store and barber shop. The tenant resides in the home but shares the kitchen and bathroom with these two commercial operations

The landlord testified that during the approximately 2 years that the tenant has occupied the unit, he has failed to maintain reasonable standards of cleanliness as required under the Act. The landlord testified that the tenant has caused significant damage to the unit including large holes puncturing the drywall, broken windows, damaged stove

and refrigerator. The landlord pointed out that they received a report that the tenant was witnessed purposely destroying a section of the fence. The landlord testified that there have been incidents that relate to the state of the tenant's mental health.

The landlord submitted photographs into evidence showing numerous areas with significant drywall damage, broken windows, garbage strewn about, filthy floors, a dirty kitchen and dented appliances.

The tenant acknowledged that he had caused some damage to the unit, including the drywall and two broken windows, but maintains that this was not intentional. The tenant testified that there were also some pre-existing holes in the drywall and some windows were already broken when he first moved in.

The tenant pointed out that the section of the fence he knocked was fragile, poorly built and old. The tenant testified that he is willing to repair the damage, but had never been given a written request by the landlord to do the repairs, nor any written warnings before the landlord issued the One Month Notice to End Tenancy for Cause.

In regard to the allegations about the tenant's failure to clean, the tenant testified that he has since cleaned up the kitchen and bathroom and has committed to keeping the common areas clean. The tenant acknowledged that there is garbage and broken items to be disposed of, and stated that he is willing to do this.

The tenant is requesting that the One Month Notice to End Tenancy for Cause be cancelled.

Analysis

The burden of proof is on the landlord to justify the Notice.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

I find that the evidence submitted by the landlord clearly shows extensive damage to the walls and windows. The photos show that the common areas and the tenant's room are not clean and that refuse, personal possessions, papers and rocks are scattered over the floors. The photos of the kitchen show stove top, counters, refrigerator and sinks covered in grime, food and dirty dishes.

Although I do not doubt the landlord's testimony that they discussed some of the problems with the tenant in the past, I find that no written warnings had been issued to the tenant by the landlord. I accept that the tenant did not maintain adequate cleanliness and hygiene in the common areas sufficient to meet the standards of section 32 of the Act. I note that the kitchen and bathroom as shared or common areas are accessible to others who share some responsibility to maintain cleanliness as well. I also accept the tenant's testimony that he has now cleaned up the kitchen and bathroom and intends on complying with the Act in this regard in future. I find that the tenant has also made a commitment to remove garbage and not store any unsanitary or hazardous items in the unit.

I accept the tenant's testimony that the fence may have been fragile. However, I find that the tenant still has an obligation to repair any damage he caused, even unwittingly, to the best of his ability.

In regard to the alleged damage to the stove and refrigerator, I accept the tenant's testimony stating that these appliances are still functional and otherwise I make no other findings. The landlord is aware that the condition of the unit, including unrepaired damage found, can be assessed at the end of the tenancy at which time damage claims may be pursued through dispute resolution.

With respect to the One-Month Notice to End Tenancy for Cause I find that this Notice must be cancelled for the reasons given above. However, in cancelling this Notice I issue the following cautions and orders against the tenant:

- The tenant is ordered to repair all damage to the drywall that was caused by the tenant, within 3 weeks of receiving this decision.
- The tenant is ordered to repair all damage to the windows that was caused by the tenant, within 3 weeks of receiving this decision.
- To the best of his ability, the tenant is ordered to repair the damage to the fence section was caused by the tenant, within 3 weeks of receiving this decision.

- The tenant is ordered to remove and dispose of all garbage, broken or abandoned items in the rental unit, particularly those he has left in the common areas, within 3 weeks of receiving this decision.
- The tenant is hereby cautioned to maintain the unit and common areas in a state of hygiene that complies with section 32 of the Act.
- The tenant is hereby cautioned to comply with section 28 of the Act by respecting the quiet enjoyment in the complex and is warned to refrain from engaging in conduct that may disturb the landlord or other renters.
- The tenant is hereby cautioned not to cause any further damage to the unit.

This decision serves as a record and warning. The tenant acknowledged that, should they fail to comply with the above orders and cautions, this could place the continuation of the tenancy in jeopardy. The tenant is aware that future transgressions of a similar nature could be considered as a valid reason to justify the landlord issuing another Notice to terminate tenancy for cause under section 47 of the Act.

Based on the evidence before me, I hereby cancel the One-Month Notice to End Tenancy for Cause dated June 19, 2014 and the tenancy will continue.

Conclusion

The tenant is successful in the application for an order to cancel the One-Month Notice to End Tenancy for Cause but the tenant is also ordered to comply with the Act in other respects.

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 26, 2014

Residential Tenancy Branch

