



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARCELLA KINGSBURY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNE

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on November 25, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on February 1, 2013 as a month to month tenancy. Rent is \$700.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$350.00 on February 1, 2013.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated November 16, 2015 by personal delivery on November 16, 2015. The Effective Vacancy Date on the Notice is December 30, 2015.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of other occupants. The Landlord continued to say there are two incidents. Firstly the male Tenant has let cats into the rental complex and other occupants have complained as they have allergies which are putting their health at risk. Secondly the male Tenant was seen smoking in the hall way of the rental complex and this is not allowed. The Landlord said for these reasons she issued the 1 Month Notice to End Tenancy for Cause.

The Tenant said the Landlord's claims are true in that he has let unit 18's cat into the building and he has been seen removing neighbourhood cats from the rental complex. The Tenant said they do not have a cat and are concerned that they received a Notice to End Tenancy for having a cat when they don't but other occupants in the building do have cats. The male Tenant said he has stopped letting the cat from unit 18 into the building and he is tries to keep neighbourhood cats away from the door. Further the Tenant said he did walk through the hallway with a cigarette on one occasion but he was not smoking in the hallway. The male Tenant said it was one incident and he will not do that again.

The Landlord said she understands the Tenant has not let cats in or smoked in the hallway since the Notice to End Tenancy was issued and the Landlord said there have not been any more complaints about the Tenants. The Landlord said the rental complex appears to be happy again.

The Tenant said he feels that they have been singled out and the tenancy agreement does not have a smoking clause in it nor does the tenancy agreement mention no pets in the rental units. The Tenant said they want to continue the tenancy and he has correct the previous incidents.

The Landlord agreed there is no smoking or pet clauses in the tenancy agreement but they advertise the units as no pets allowed and there are no smoking signs in the common areas.

The Tenant said in closing that he has corrected the issues in the Notice to End Tenancy and things appear to be good in the rental complex now.

The Landlord agreed there have been no more complaints about the Tenants and they will amend the tenancy agreements to include a pet and smoking clause so these items are clear to the tenants.

Analysis

It is apparent from the testimony and evidence that there have been two incidents in which the Landlord has received complaints about the Tenant's behaviour. The incidents are the male Tenant letting cats into the rental complex and smoking in the hallways. Further from the testimony of both the Landlord and the Tenant it appears the male Tenant has corrected the behaviours that have caused the complaints from other tenants in the building. As well I accept the tenancy agreement does not have clauses in it with regards to smoking and pets therefore it is unclear as to what the rules are.

Consequently the parties will abide by the following decision. In Section 47 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47 of the Residential Tenancy Act. As well I accept the testimony of both parties who said the male Tenant has corrected his behaviour and there have been no more complaints. Consequently, I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date November 16, 2015 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement dated April 10, 2013.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated November 16, 2015 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: January 19, 2016

Residential Tenancy Branch

