



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause.

The tenant and one of the landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel a One Month Notice to End Tenancy for cause?

Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2015. Rent for this unit is \$1,100.00 per month due on the first of each month.

The landlord attending testified that he served the tenant a One Month Notice to End Tenancy for cause (the Notice) on August 21, 2016. A copy of this two page document has been provided in documentary evidence. The landlord testified that he served the tenant with a second One Month Notice to End Tenancy on August 22, 2016. The landlord has only provided the first page of this Notice in documentary evidence. The Notices have an effective date of September 20, 2016. The tenant filed her application to dispute the Notices on August 26, 2016.

The Notice dated August 21, 2016 provided the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- 2) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) *Damaged the landlords' property*
- 3) *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*
- 4) *The tenant knowingly gave false information to prospective tenants or purchaser of the rental unit/site.*

The landlord testified that the tenant came yelling and screaming at the landlord telling him to read the *Tenancy Act*. After the landlord served the tenant the tenant's sister called the landlord and threatened that she would build a case against the landlord concerning his disability. The landlord testified that his son used to live in the landlords' unit and the tenant's back door is only 25 feet from the landlords' unit. The landlords' son was outside sitting in his truck on the driveway when the tenant came out and started screaming at the landlords' son saying he doesn't need to come back as he doesn't live there.

The landlord testified that the tenant has not engaged in any illegal activity that he is aware of but she has damaged the front door screen of the rental unit by putting her hand through it to unlock the door. The tenant's cats have also damaged a fruit tree in the yard as they use it for a scratching post and the sap now runs out.

The landlord testified that the tenant got two cats without the landlord's permission. The landlord agreed that he does not have a clause in the tenancy agreement to state that the tenant cannot have cats. The tenant came and asked the landlord about getting pets and was told to come and discuss it with the landlords so they could work out an agreement. The tenant did not do this and the landlords saw cats on the blinds in the unit. The landlord testified he wrote up an agreement and took a copy of it to the tenant to sign that she would be responsible for any damage caused by the cats. The tenant has still not signed or returned that agreement to the landlords.

The landlord testified that he was trying to sell the property and had a real estate agent come to look at the rental unit to give the landlords a price. The house was so untidy that the real estate agent could not give the landlord a price and said he would have to come back. The landlord agreed that the tenant has not given false information to a prospective tenant or purchaser of the unit.

In the landlords written submission he spoke about an issue with the tenant dumping cat litter in the yard; however, made no mention of this during his testimony.

The landlord requested an Order of Possession of the rental unit and stated he is willing to extend the date the tenant has to vacate the unit to November 30, 2016.

The tenant disputed the landlord's testimony and the reasons given on the Notice. The tenant testified that she has not yelled or screamed at the landlord. The landlord is hard of hearing so you have to talk loudly to him. The tenant testified that she spoke to the landlord about him reading the *Act* in reference to him entering the property. The tenant disputed that she yelled or screamed at the landlords' son. The tenant testified that the

landlords' son does not live on the property but was starting his loud two stroke engine outside the tenant's door. The tenant had to speak loudly to ask him not to do that.

The tenant testified that she has not done anything illegal. The screen door was already damaged due to the age of the door and the high winds that come through the area. The tenant agreed she does reach through the torn screen to unlock her door as the screen is often stuck but she has not done any damage. The tenant testified that it is natural for cats to use a tree as a scratching post. The tree is not damaged and is still alive.

The tenant testified that with regard to the cats; she did inform the landlord that she was getting cats as there was a mouse problem in the unit. The tenant testified that she told the landlord if he did not help her get rid of the mice she would have to get cats. The landlord said cats are fine but not to get a dog. The tenant testified that there is nothing written to say she cannot get a pet. The landlord did bring a paper round but it was not a contract it was more of an acknowledgment that she had cats.

The tenant seeks to have the Notices set aside and for the tenancy to continue at this time.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

In this matter the landlord issued two Notices to End Tenancy. The first Notice was issued on August 21, 2016. The second Notice was issued on August 22, 2016. The Notice issued on August 22, 2016 did not have the second page of the Notice for me to determine the reasons put on that Notice or to determine if the tenant was sent both pages. In light of this I must consider that that Notice is incomplete and is therefore null in void. I have therefore based my decision on the Notice dated August 21, 2016 which is a complete Notice.

With regard to the first reason given on the Notice; I find the landlord has insufficient evidence to show that the tenant has disturbed either the landlords or the landlords' son. It was clear from the hearing that the landlord did have difficulty hearing and therefore based on a balance of probability I find I prefer the tenant's evidence that she has to raise her voice when speaking to the landlord. Furthermore, if the landlords' son is causing noise outside the tenant's unit I also find it likely the tenant would have to raise her voice to be heard. Even so simply yelling at another party would not be sufficient grounds to end a tenancy as clearly the relationship between the parties has broken down.

With regard to the second reason given on the Notice, the landlord has insufficient evidence to show that the tenant caused damage to the door screen or that her cats have damaged a tree and the landlord agreed that no illegal activities had taken place.

With regard to the third reason given on the Notice; the landlord has checked the box stating that the tenant has breached a material term of a tenancy agreement. The parties agreed that there is no mention in the tenancy agreement and no addendum that prohibits the tenant getting cats. Therefore, I must conclude that no breach has taken place. I do however refer the parties to s. 18(2) of the *Act* with regard to pet damage

deposits and strongly suggest both parties familiarize themselves with this section of the *Act*.

With regard to the forth reason given on the Notice; the landlord agreed that the tenant has not provided any false information to a prospective tenant or purchaser of the rental unit. If the landlord's realtor went to the unit and found the place untidy then this would not be considered sufficient grounds to end a tenancy.

After consideration of the above, I find there was insufficient evidence to prove the reasons listed on the One Month Notice issued August 21, 2016. Accordingly, I uphold the Tenant's application and the One Month Notice issued August 21, 2016 is hereby cancelled and is of no force or effect.

Conclusion

The tenant's application is allowed. The one Month Notices to End Tenancy for Cause dated August 21, 2016 and August 22, 2016 are cancelled and the tenancy will continue until legally ended.

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 19, 2016

Residential Tenancy Branch

