



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VERNON & DISTRICT COMMUNITY LAND TRUST SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

On October 14, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause be cancelled.

The matter was scheduled as a teleconference hearing. The Landlord and the Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties confirmed that they have exchanged the evidence submitted to the Residential Tenancy Branch that is before me. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

Preliminary and Procedural Issues

The Tenant provided a compact disk containing digital evidence in a .3GA audio format. The file format provided by the Tenant is not supported by Residential Tenancy Branch computers and cannot be opened or played.

Rule 3.10 of the Residential Tenancy Branch Rules of Procedure requires that a party who submits digital evidence must determine that the Residential Tenancy Branch and the other party can access the evidence prior to the hearing. Consequently, the Tenant's compact disk containing .3GA files will not be considered in this hearing.

The Landlord testified that the 1 Month Notice To End Tenancy For Cause ("the 1 Month Notice") that was issued to the Tenant on October 11, 2016, contains the wrong date. The Landlord testified that the 1 Month Notice is dated incorrectly. The 1 Month Notice indicates it was signed by the Landlord on November 11, 2016. The Landlord testified that the 1 Month

Notice was actually signed by the Landlord on October 11, 2016, and was posted on the Tenant's door on October 11, 2016.

The Tenant testified that he received the 1 Month Notice on October 11, 2016.

Section 47 of the Act states that a 1 Month Notice must comply with the requirements regarding form and content of a notice pursuant to section 52 of the Act.

Section 52 of the Act states, in order to be effective, a notice to end tenancy must; be in writing; be signed and dated; give the address of the rental unit; state the effective date; state the grounds for ending the tenancy; and be in the approved form.

Section 68 of the Act gives the Director the authority to amend a notice to end tenancy if the person receiving the notice knew the information that was omitted from the notice and in the circumstances, it is reasonable to amend the notice.

I find that the Tenant received the notice on October 11, 2016, and disputed the notice on October 14, 2016, and therefore knew the correct date of the Notice that was omitted. I find that in the circumstances it is reasonable to amend the Notice to be signed on October 11, 2016. I find that the 1 Month Notice is a valid notice to end tenancy.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?
- Is the Landlord entitled to an order of possession?

Background and Evidence

Both parties testified that the tenancy commenced on November 1, 2013, as a month to month tenancy. Rent in the amount of \$538.00 is due on the first day of each month. The Tenant currently receives a rent subsidy and the Tenant pays \$311.00 per month. The Tenant paid the Landlord a security deposit in the amount of \$250.00.

The Landlord J. M. testified that an inspection of the rental units is conducted each year. The Landlord inspected the Tenant's unit and it was found by the Landlord to not meet health and safety standards. The Landlord testified that another inspection was scheduled and the Tenant was not cooperative with maintaining the rental unit.

The Landlord testified that there has been an issue with cock roaches in the building and a pest control company comes to conduct inspections.

The Landlord M.P. testified that considerable money has been spent on the rental unit and the damage that's done is more than the Landlord can keep up with.

The Landlord issued the Tenant a 1 Month Notice To End Tenancy For Cause on October 11, 2016. The reasons for ending the tenancy listed within the 1 Month Notice are:

- Tenant or a person permitted on the property by the Tenant has:
 - Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
 - Put the Landlord's property at significant risk.
- Tenant has caused extraordinary damage to the unit/site property /park.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Landlord also provided documentary evidence of a letter the Landlord sent to the Tenant dated September 22, 2016. The Letter states that the Landlord requests the Tenant to maintain the rental unit in a healthy and safe manner. The Letter indicates a follow up inspection will be conducted on October 6, 2016.

The Landlord provided documentary evidence of a letter the Landlord sent to the Tenant dated October 7, 2016. The Letter states that upon inspection the Tenant's apartment does not meet health and safety standards. The letter indicates the Tenant told the Landlord that the Landlord cannot tell him how to maintain his apartment and that it is fine.

The Landlord provided digital evidence of photographs of the rental unit. The photographs are of the Tenant's toilet, bathtub, and baseboard.

The Landlord provided digital evidence of a video recording taken of the rental unit. It appears the video was taken during an inspection but was recorded secretly. The video footage is extremely shaky, points at the floor and walls and occasionally focuses on a few areas within the rental unit.

In response to the Landlords testimony, the Tenant asked the Landlord if there have ever been any pests in his rental unit and the Landlord replied "no".

The Tenant testified that he has a bad hip and a bad back but he does clean the unit. The Tenant testified he feels insulted by the Landlord saying he is not a clean person.

The Tenant provided digital evidence of photographs of the interior of the rental unit. Many of the photographs were not in focus.

The Tenant testified that an individual, L.T. from Interior Health attended his rental unit to conduct an assessment. The Tenant testified that L.T. did not see anything of concern with the state of cleanliness or condition of the apartment.

The Tenant testified that the Landlord told him that Interior Health will not assess his needs for assistance unless the Landlord issues a notice to end tenancy. He submits that the Landlord told him he is sick and they need to get him out.

The Tenant testified that he quit smoking cigarettes and that the accusation that he was smoking marijuana is false.

The Tenant's advocate T.L. submitted that the Landlord has not properly identified the health and safety standard that they are applying to the Tenant.

The Tenant's advocate submitted that there is a history of dampness in the rental unit and that this dampness is affecting the flooring.

The advocate submitted that the Landlord's maintenance person does not have the best communication skills with his interactions with the Tenant. She submits that there is a history of tension.

The Landlord J.M. clarified that she facilitates community care for Tenants. She testified that Interior Health Authority helps with assessing and finding assisted living for a person when a person is evicted.

The Landlord R.K. testified that the Tenant made serious allegations on July 18, 2016 against J.M. regarding misappropriation of his housing subsidy and that the allegations were advanced to mislead and mis-inform. The Landlord stated he is still considering further action.

Analysis

Section 32 of the Act states that 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.

Residential Tenancy Policy Guideline #1. Landlord & Tenant – Responsibility for Residential Premises clarifies the responsibilities of Landlords and Tenants regarding maintenance, cleaning and repairs of residential property. The Guideline states:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result

of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site, or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act.

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

A significant amount of the Landlord's photographic and digital evidence relates to the Tenant's cleanliness of the rental unit. The video footage from the Landlord was not very helpful as it appears it was recorded secretly; is shaky, and does not provide a clear perspective on the cleanliness of the entire unit. The Tenant presented photographs and testimony that Interior Health had no concerns with the cleanliness of his unit.

The Landlord submits the Tenant's failure to clean the unit presents health and safety issues and the Landlord stated that damage done is more than the Landlord can keep up with. I find that there is insufficient evidence from the Landlord to establish that the Tenant is failing to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

I find that the Landlord has provided insufficient evidence to establish that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, or put the Landlord's property at significant risk.

I also find that the Landlord has provided insufficient evidence to establish that the Tenant has caused extraordinary damage to the unit/site property /park. I do not find that the Landlord has proven that the Tenant is responsible for any damage caused to the unit or the floor.

A material term of a tenancy is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

With respect to a breach of a material term, it is unclear to me whether the Landlord is considering a lack of cleaning to be a breach of material term, or whether it is the allegation of smoking. The Tenant testified that he does not smoke cigarettes and testified that he is not responsible for the smell of marijuana in the rental property. The Tenant submitted that after the Landlord left he dressed and went into the hall and could only smell perfume. The Tenant feels the Landlord is harassing him.

I find that the Landlord has failed to establish that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written Notice to do so.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the 1 Month Notice To End Tenancy For Cause dated October 11, 2016.

The Tenant's Application is successful. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's Application to cancel the 1 Month Notice is successful. The 1 Month Notice To End Tenancy For Cause dated October 11, 2016, is cancelled.

The tenancy will continue until ended in accordance with 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: December 12, 2016

Residential Tenancy Branch