



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EAGLE POINT VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On October 18, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 1 Month Notice To End Tenancy For Cause and to recover the cost of the application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. 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. The parties confirmed that they had exchanged the documentary evidence before 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.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties agreed that the tenancy began around July of 2012. The tenancy is on a month to month basis. Rent in the amount of \$1,511.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$755.50. The Tenant testified that the rental property contains a house that has four self-contained rental suites.

The Landlord testified that he became the property manager of the rental property as of September 2018.

The Landlord testified that he issued a 1 Month Notice To End Tenancy For Cause dated October 10, 2018, to the Tenant. The reason for ending the tenancy within the 1 Month Notice is:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so

The Landlord testified that the Landlord sent the Tenant a breach letter dated August 16, 2018, regarding the Tenants use of the garage located on the rental property. The breach letter indicates that the Tenant is using storage space in the garage and states that the space is not included in the tenancy agreement. The Letter indicates the Tenant has until August 22, 2018 to clear her belongings. The Landlord provided a copy of the letter.

The Landlord testified that the Tenant did not remove her items from the garage. The Landlord testified that the Landlord sent the Tenant a Notice for non-compliance on October 10, 2018; along with a 1 Month Notice To End Tenancy For Cause. The Landlords letter indicates that as of September 27, 2018, the Tenant had not removed her possessions and that this is considered a violation of the tenancy agreement. The Landlord provided a copy of the letter.

The Landlord is requesting an order of possession for the rental unit due to a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant testified that she received the Landlords letter on August 19, 2018 and replied to the Landlord using email.

The Tenant testified that there have been three different property managers at the rental property throughout the years. She testified that she reached an oral agreement with the previous property managers that permits her to use the garage for storage.

The Tenant provided a copy of an email from Mr. O.C. , a previous property manager, who indicates the Tenant had use of the garage for storage for the entire time of the tenancy.

The Tenant provided an email from a former property manager Mr. D.W. who states that the Tenant had use of the garage while he was property manager.

The Tenant testified that the garage has historically been shared for storage by other occupants of the rental property. The Tenant testified that she is the only remaining Tenant as the other rental units are vacant. She testified that she is the only one using the garage which is approximately 30 feet by 25 feet in size.

The Tenant testified that this is the third notice to end tenancy she has received and disputed; with the other two notices being set aside by an Arbitrator. The Tenant testified that she is feeling harassed.

In reply, the Landlords submitted that if the previous property manager permitted the Tenant to use the garage, it does not mean that the current property manager cannot revoke permission to use the garage. They submitted that the garage is not included in the tenancy agreement.

The Landlord confirmed that nobody else is using the garage because the rest of the units are vacant. The Landlord was asked what prompted them to issue a notice to end tenancy and the Landlord replied that they feel the Tenant is using space she is not entitled to use.

Analysis

The Landlord's 1 Month Notice states that there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

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 find that approximately six years ago the Tenant reached an oral agreement with a previous Landlord that permitted her to use part of the garage as storage. I find that other occupants of the rental property were also afforded the use of the garage.

I find that the oral agreement permitting use of the garage became a term of the tenancy and this term cannot be unilaterally revoked by the new Landlord regardless of whether or not compensation was agreed upon for its use.

I find that the Landlord has not provided sufficient evidence to support that there was a breach of a material term of the tenancy that was not corrected within a reasonable time

after written Notice to do so; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated October 10, 2018.

I order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 filing fee that the Tenant paid for the hearing. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated October 10, 2018, 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: November 29, 2018

Residential Tenancy Branch