



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC, O

Introduction

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

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started approximately 10 years ago. On January 24, 2009, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated January 19, 2009. The Notice alleges the following grounds:

“The Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Put the landlord’s property at significant risk”

The Landlord claimed that in November of 2008, the Tenant’s boyfriend started living in the rental unit without advising the Landlord. The Landlord also claimed that the Tenant gave her boyfriend a set of keys to the rental property and rental unit without her knowledge or consent. The Tenant argued that there was nothing in her tenancy agreement that prevented another occupant from living in the rental unit. She also argued that the manager/caretakers of the rental property met her boyfriend and gave her their written approval for him to have a set of keys.

The Parties agree that in December of 2008, the Tenant’s boyfriend propped open the front door (to a common entrance) for approximately 10 minutes while he ran across the street to a convenience store. On another occasion in December, when the Tenant’s boyfriend could not find keys, he taped over the lock to a different building entrance while he went out to run an errand. One of the Landlord’s manager/caretakers discussed this with the Tenant’s boyfriend and gave him a copy of the rules. The Landlord said no warning was given to the Tenant but it was a term of their tenancy agreement that the Tenant not alter locks or make extra keys.

The Tenant agreed that the doors to the building should not have been left open but argued that these incidences were not significant and that there had been no recurrence. She also argued that the Landlord did not advise her about these incidences until after she was served with the Notice to End Tenancy.

The Parties also agree that in August of 2008, one of the manager/caretakers for the Landlord was doing routine maintenance and discovered that the Tenant's smoke alarm had been disconnected. The Landlord said no written warning was given to the Tenant but the caretaker spoke to the Tenant about it. The Landlord said the Tenant's smoke alarm was missing during a routine inspection in July 2006 as well. The Tenant claimed that the smoke alarm was sensitive to steam from the shower and cooking and that it probably fell off when she hit it with a towel. The Tenant also claimed that it would not have been disconnected for more than a couple of hours. The Tenant said she had asked the caretaker/manager to move the smoke detector a while ago but nothing had been done.

The Landlord also claimed that in October, 2008, during a routine inspection, a member of the fire department found a lot of papers and clutter in the Tenant's unit and around her door that posed a fire hazard and mentioned it to the manager/caretaker. The Tenant suggested that this would have been an infrequent occurrence in that she is very tidy but in any event said she could not recall the manager/caretaker mentioning it to her.

The Tenant argued that the real issue in this matter had to do with her boyfriend living in the rental unit and that on February 2, 2009, she met with the caretakers/managers and was told by them the Notice was going to be withdrawn. However, a few days later, the Tenant said the caretakers/managers advised her that the Landlord intended to pursue the Notice. The Tenant argued that the Landlord intended to use the unit for a family member (which the Landlord denied). The Tenant also claimed that her boyfriend now has his own residence.

Analysis

Not every breach of a tenancy agreement or the Act will entitle the Landlord to end the tenancy. Unless there is a single occurrence that is so severe that it warrants an immediate end to the tenancy, fairness requires that a landlord give a tenant notice that the conduct in question is in violation of the tenancy agreement or Act together with a written warning that a repeat of the behaviour in question will result in the tenancy being terminated.

In this case, I find that the incident with the smoke detector missing in July, 2006 is too remote in time to be relied on by the Landlord. With respect to the smoke alarm incident in August, 2008, I find that the caretaker/manager spoke to the Tenant about it

but no warning was given to her that her tenancy was in jeopardy if it occurred again. Furthermore, I find that there is no evidence that the Tenant disconnected it again after August, 2008. Consequently, I conclude that this single incident did not seriously jeopardize the health or safety of other residents or put the rental property at risk.

With respect to the incidences concerning the common entrances to the rental property, I also find that the caretaker/manager spoke to the Tenant's boyfriend about it, however, there is no evidence that the Tenant was notified about the Landlord's concern prior to receiving the Notice to End Tenancy. I also find the Tenant was not given a warning that a repeat of this conduct would result in the tenancy ending.

While I find the breaches of the tenancy agreement or Act relied on by the Landlord are not significant enough on their own to warrant eviction, I agree with the Landlord that there was a *potential* safety risk to other residents of the rental property and the Tenant is now on notice that a repeat of that conduct could result in a termination of the tenancy.

Conclusion

The One Month Notice to End Tenancy for Cause dated January 19, 2009 is cancelled and the tenancy will continue.