



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated March 19, 2010. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, put the landlord's property at significant risk by continuing to disregard demands to cease roof-top activities and that the tenant had engaged in illegal activity that had adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence are:

- Whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), has been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Preliminary Matter

The landlord had submitted late evidence that was received on file the day before the hearing.

Rule 4.1 requires that , if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents and other evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the “Definitions” part of the Rules of Procedure.

In some cases the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met and if this is the case, then all of the respondent’s evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

In this instance I found that the evidence was received by the RTO too late and the applicant tenant stated that the evidence had not been received by the tenant. Accordingly, this late evidence was not taken into consideration in the determination of this dispute. However, the landlord’s verbal testimony about the evidence was presented and discussed.

Background and Evidence

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated March 19, 2010 showing an effective date of April 30, 2010 and written statements from the applicant and her advocate disputing the causes listed on the One-Month Notice.

The landlord explained that there are two residential renters living above a commercial tenant. One of the residential tenants is the applicant. The landlord testified that oral and written complaints had been received about the tenant disturbing the quiet enjoyment of the other renter occupying the second residential unit in the complex. The allegations included noise from late-night visitors, drunken behavior of the tenant's guests, menacing conduct, noise and alleged illegal drug activity. The landlord stated that police had attended repeatedly and in fact, the two renters are presently engaged in legal proceedings based on alleged threats from the tenant or her associates against the complaining resident. The landlord stated that he does not know whether the accusations have merit, but is attempting to comply with the Act by taking necessary steps to meet his statutory obligations to ensure that complaints are acted upon and quiet enjoyment is protected for all.

The landlord gave verbal testimony that he received written witness testimony from individuals supporting the other resident's complaints. The landlord stated that he did not personally witness any of the alleged incidents, but is only aware that the police have attended repeatedly responding to calls.

The landlord testified that he did have first-hand knowledge in regards to a issue with the tenant failing to follow the landlord's instructions not to place her patio furniture close to the edge of the roof . The landlord felt that the tenant's noncompliance after the written warning warranted the One-Month Notice for Cause. The landlord pointed out that there was a genuine liability issue that served to put the landlord's property at risk.

The tenant disputed the allegations and stated that the neighbouring occupant has been unfairly persecuting her by lodging complaints to the landlord and the police. The tenant testified that she has no control over persons coming onto the premises seeking a former resident and who bother the other occupant of the building by making noise or knocking on doors. The tenant stated that she is not permitted to engage in the conduct being alleged because it would constitute a breach of probation and thereby jeopardize her freedom.

In regards to not immediately complying with the landlord's request to remove the table from the roof, the tenant stated that this was due to a misunderstanding and that she was more than willing to keep the patio furniture closer to the door and ensure that her guests also comply with the rules.

A mediated discussion ensued and the parties agreed to the following:

- The One-Month Notice for Cause issued on March 19, 2010, will be cancelled but will function as a final written warning to the tenant not to disturb others
- Tenant is now aware that bothering the landlord or other occupants including such actions by visitors will not be tolerated.
- The tenant will restrict use of the patio to a perimeter of 10 feet from the door.
- The landlord will instruct the tenant and the other resident in the building not to communicate directly with one another, but to direct all concerns to the landlord in written form.
- The landlord will monitor the activities and conduct of the residents in both units of the building and take such action as deemed necessary if violations of the Act occur.

Conclusion

Based on the above, I order that the landlord's One-Month Notice to End Tenancy for Cause dated March 19, 2010 is hereby permanently cancelled and of no force nor effect based on a mutual agreement by the parties to follow the above conditions.

May 2010

Date of Decision

Dispute Resolution Officer