



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is there a basis to cancel the Notice to End Tenancy for Cause?

Background and Evidence

This one year, fixed term tenancy began on February 11, 2009, continues now on a month to month basis, monthly rent is \$780.00, and the tenant paid a security deposit of \$390.00 at the beginning of the tenancy.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified as to why the tenant had been served a 1 Month Notice to End Tenancy.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the tenant on July 14, 2011, by posting on the door, with a stated effective vacancy date of August 31, 2011. The causes as stated on the Notice alleged that the tenant is repeatedly late paying rent, significantly interfered with or unreasonably disturbed another occupant or the landlord and has engaged in illegal activity that has or is likely to damage the landlord's property and adversely affect the quiet enjoyment of another occupant or the landlord.

In support of the Notice, the landlord testified that on July 14, 2011, the tenant arrived at the residential building in an intoxicated state, after which he proceeded to yell obscenities to the painters then painting the premises.

The landlord testified that the tenant continued to swear at the painters and then engaged in a verbal argument with his son-in-law.

The landlord then placed a written warning on the tenant's door, telling him to stop with the behaviour.

According to the landlord, the tenant called him 10 minutes later and said he would continue to "raise hell."

Upon query, the landlord stated that there have been no occurrences since that time and there were none prior to that time.

As to the late payments of rent, the landlord testified that the tenant had made two late rent payments. I note there was no evidence of the late payments.

As to the alleged illegal activity listed on the Notice, the landlord stated the activity was the tenant uttering threats.

The tenant responded by saying that the behaviour was inexcusable, but attributed it to having a bad day at work, being injured and having too many drinks. The tenant acknowledged fault, and has apologized both verbally and in letter form.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In this instance, the burden of proof is on the landlord to prove the causes listed on the Notice.

As to repeated late payments, the landlord submitted insufficient proof that the tenant has paid rent late. Further Residential Tenancy Branch Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. I therefore find that the landlord failed to prove this cause listed.

As to alleged illegal activity by the tenant, the landlord submitted insufficient proof that the engaged in any illegal activity; rather it appears from the landlord's response that these boxes were marked in error. I therefore find that the landlord failed to prove these causes listed.

As to the remaining cause listed on the Notice, after considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I considered the incident complained of occurred just once.

I was further influenced by the landlord's testimony that the tenant had not behaved in this manner before the incident or since. Therefore the behaviour does not show a repeated pattern.

While the incident of the tenant swearing at the painters is not to be condoned, there is no evidence before me to support that the landlord has a continuing problem with this tenant. I do not find the one incident to rise to the level required to end a tenancy.

Conclusion

Having found that the landlord has provided insufficient evidence to meet the burden of proof necessary to end a tenancy, **I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 14, 2011 be cancelled and this tenancy continues until it may legally end under the Residential Tenancy Act.**

The tenant should be well informed, however, that any future occurrence of the type of behaviour which led to the issuance of the Notice may result in the landlord issuing another Notice to End the Tenancy.

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: August 25, 2011.

Residential Tenancy Branch