



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was posted on the Tenant's door, which declared that the Tenant must vacate the rental unit by September 31, 2011. The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the 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; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The Witness from Unit #310 stated that she is regularly disturbed by the screaming and profanity she hears through the wall she shares with the Tenant. She stated that she hears banging noises, which she believes is him banging his cane against furniture and that it frequently sounds like he is speaking with someone in a loud voice. She estimates she is disturbed from noise in the Tenant's rental unit on a daily basis; that the noise usually stops around 1 a.m.; and that she has not heard any loud noises for the past 4-5 days.

The Witness from Unit #308 stated that she is regularly disturbed by the screaming and profanity she hears through the wall she shares with the Tenant and that it frequently

sounds like sometimes he is speaking like a woman and sometimes imitating the voice of another man. She estimates she is disturbed from noise 4 or 5 times per week at different times during the day and night. She stated that the noise often wakes her in the night. She stated that she has not heard the Tenant in the last few days.

The Witness from Unit #322 stated that she lives directly above the Tenant and that she regularly awakened during the evening by the Tenant yelling and banging on the walls. She estimates that she hears yelling 4 or 5 times per month and banging 3 or 4 times per month. She stated that she has not heard the Tenant in the last few weeks.

The Witness from Unit #311 stated that she lives in the residential complex and that she was disturbed when she observed the Tenant urinating in the bushes, with his pants below his knees. She cannot recall the exact date of this occurrence, although she acknowledges it was not recent.

The Tenant acknowledged that his alcohol consumption causes him to behave inappropriately at times; he stated that he "blacks out" and often cannot remember his actions; that he does not dispute the testimony of the witnesses; and that he has not consumed alcohol for approximately one week. He expressed remorse to the Agent for the Landlord and requested that he be allowed to continue to live in the rental unit.

The Agent for the Landlord stated that the Tenant has been given many opportunities in the past and she declined to continue the tenancy.

The Landlord and the Tenant agree that the Tenant was given written warnings, dated April 27, 2010 and May 26, 2010, at which time he was advised that his language and level of intoxication was bothering other occupants. The parties agree that he was given a third written warning, dated October 13, 2010, in which he was advised that he must not leave his rental unit insecure.

The Agent for the Landlord stated that on August 04, 2011 the Tenant was highly intoxicated; that he fell on the residential property and cut his face; that the ambulance took him to the hospital for treatment; and that she took his personal property to his unit on his behalf, at which time she found the unit insecure. She contends that that the Tenant is jeopardizing the safety of other occupants when he leaves his rental unit insecure, as they can access the complex through his unit.

Analysis

I find that the Landlord has provided sufficient evidence to show that the Tenant has significantly interfered with or reasonably disturbed another occupant or the Landlord. In reaching this conclusion I placed significant weight on the testimony of the witnesses. I find that their testimony has established a pattern of behaviour that would disturb most people.

I find that the Tenant has been given ample notice that his behaviour is disturbing

others. While I accept that the Tenant is remorseful and has not consumed alcohol for approximately one week, I find that I have insufficient reason to conclude that the Tenant will be successful in controlling his behaviour. In reaching this conclusion I was heavily influenced by the fact the he continued to disturb his neighbours in spite of the previous warnings he received.

Conclusion

As I have determined that the Landlord has satisfied the legislative requirements to end a tenancy for cause, pursuant to section 47(1)(d)(i) of the *Act*, I am dismissing the Tenant's application to set aside the One Month Notice to End Tenancy and I grant the Landlord an Order of Possession, as requested at the hearing, that will be effective on October 31, 2011.

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*.

Date: September 29, 2011

Residential Tenancy Branch