

Decision

Dispute Codes:

CNC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated April 30, 2012. 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 and put the landlord's property at significant risk.

Issue(s) to be Decided

The issue to be determined, based on the testimony and the evidence, is whether the One-Month Notice to End Tenancy should be cancelled as requested by the tenant.

The burden of proof is on the landlord.

Background and Evidence

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated April 30, 2012 showing an effective date of May 31, 2012, proof of service, written testimony, copies of communications and a copy of the tenancy agreement . Evidence was submitted by the landlord including written testimony containing a chronological history, a photo and copies of communications .

The landlord testified that the tenant brought a large hot-tub into the unit with the intention of installing it on their balcony. The landlord testified that the tenant was repeatedly cautioned that this would not be allowed as it created safety issues and other concerns. However, according to the landlord, the tenant was not willing to remove the hot tub and the landlord felt it necessary to issue a One Month Notice to End Tenancy for Cause. The landlord testified that the tenant continued to resist removal the hot tub from the premises until recently.

The tenant testified that, when they received the landlord's demands and warnings to remove the hot tub, they researched the issue thoroughly before deciding to do so. Finding no clause in the agreement prohibiting the tub, the tenants looked into the other various concerns expressed by the landlord. The tenant testified that, at no time did they ever fill the hot tub, and that they had no intention of doing so until all of the alleged

problems it may cause were verified. However, according to the tenant, the landlord proceeded to serve them with a One Month Notice to End Tenancy for Cause.

The tenant testified that, once they discovered that the installation of the hot tub would not be permitted based on genuine problems it may cause, the tenants agreed to completely remove the tub, which was standing on its side on the balcony for the duration of the controversy.

The tenant testified that they then asked the landlord to waive the One Month Notice to End Tenancy for Cause on the condition that all agreed to eliminate the hot tub. According to the tenant, the landlord refused to rescind the One Month Notice to End Tenancy for Cause and the tenants were therefore forced to continue with the dispute resolution hearing, despite the fact that the dispute had effectively been resolved.

The tenant pointed out that the landlord's property was never placed at risk. The tenant's position was that the landlord's One Month Notice to End Tenancy for Cause had no merit and should be cancelled. The tenant is also seeking reimbursement for the cost of the application.

Analysis

In order to support an ending of the tenancy pursuant to section 47(1)(c) on the basis that the tenant had "*significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property*" or "*put the landlord's property at significant risk*", I find that the landlord must meet the burden of proof to justify enforcing the One-Month Notice to End Tenancy for Cause .

In this instance, I find that the tenant's actions in contemplating adding a hot tub to the balcony did genuinely alarm the landlord who feared that there may be a serious risk pending, had the tenant actually followed through with setting up the tub. I accept that this created a situation where the landlord felt it was essential to issue the One-Month Notice to End Tenancy for Cause. However, the fact is that the tenant did not actually jeopardize the safety of the other occupants nor the integrity of the landlord's building by doing anything tangible with respect to installing a hot tub.

Given the above, I find that the landlord did not submit sufficient proof that the property had been placed at risk, nor that the tenant had unreasonably disturbed or significantly interfered with the landlord or others. Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause dated April 30, 2012 must be cancelled.

I accept the tenant's testimony that they did advise the landlord that they would abandon any notion of adding the hot-tub with the hope that the landlord waive the Notice on that basis. I find that the tenant made an effort to avoid the dispute resolution hearing. But the landlord declined that opportunity and the hearing proceeded.

Accordingly, I find that the tenant is entitled to be reimbursed the cost of filing this application.

The tenant is cautioned that this decision will serve as a warning and the tenant is now aware that installing a hot-tub on the balcony or anywhere on the premises could be considered as a valid reason for the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of April 30, 2012 be cancelled and of no force nor effect.

I further order that the tenant deduct \$50.00 reflecting the cost of this application from the next rent payment owed to the landlord.

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: May 31, 2012.

Residential Tenancy Branch