



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated October 18, 2012, with an automatically adjusted effective date of November 30, 2012 [Section 53 – Residential Tenancy Act (the Act)].

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to the dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary Matters

The tenant had applied for a Monetary Order for compensation for loss. I accepted the tenant's withdrawal of this portion of their claim, and it is therefore dismissed, with leave to reapply

At the outset the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for stated and sufficient reasons.

Issue(s) to be Decided

Is the notice to end tenancy valid and issued for valid reasons?
Should the Notice to End dated October 18, 2012 be set aside?
Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began February 01, 2012. Rent is payable on the 1st of each month. The tenant submitted a copy of the Tenancy Agreement and the Notice to End. The landlord did not advance or provide any document evidence to this matter. The notice to end was issued for the following reasons;

- Tenant has allowed an unreasonable number of occupants in the unit.*
- Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*

A third reason was stated on the Notice to End; however, the reason was altered so as not to comply with the Act respecting a valid reason in order to end a tenancy. I advised the parties that this reason is therefore void and of no effect.

The tenant disputes the Notice to End in its entirety.

The landlord claims the tenant allowed a visitor to stay with them for 7 days, as opposed to the 3 days for which they received the landlord's permission. The visitor has since left.

The landlord claims the tenant was purportedly intoxicated on an occasion and was seen urinating from their deck. The landlord's agent did not see the tenant during this purported conduct and the tenant denies this to be so. In addition, the landlord claims that on an occasion the tenant played his hand-drum loudly one night and this disturbed the landlord. The tenant testified that since the incident they and the landlord have discussed it and have agreed to a 'quiet time' as of 10:30 p.m.

Analysis

In this type of application, the burden of proof rests with the applicant (landlord) to provide evidence that the Notice was validly issued for the stated and *sufficient* reasons. The landlord has not met their burden in this matter. I find that the landlord has not provided *sufficient* compelling evidence that the Notice to End was issued for the reasons stated in the notice to end, and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, **I Order** the Notice to End dated October 18, 2012 **is cancelled**, or set aside. The landlord is not entitled to an Order of Possession. If necessary, the landlord is at liberty to issue another new *valid* Notice to End for *valid* and *sufficient* reasons.

It must be noted that during the hearing the landlord and tenant discussed that the landlord has arbitrarily turned off the electricity to the rental unit. Both parties were advised that this practice is unacceptable and illegal. The parties were reminded that if they have a dispute which they cannot resolve it is available to them to seek resolution via the Dispute Resolution process.

Conclusion

The tenant's application is granted. **I Order** the landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

This Decision and Order are final and binding on both parties.

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: November 29, 2012
