



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 a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The tenant has been residing in the rental unit since April 2011 and the tenant is required to pay rent on the 1st day of every month. The rental unit is a room located in a rooming house. The tenants share bathroom facilities.

On February 16, 2012 the parties participated in a dispute resolution proceeding to deal with a 1 Month Notice to End Tenancy for Cause dated January 28, 2012. During that hearing the parties agreed to a settlement that included the following terms:

1. The tenancy shall become a 3 month fixed term tenancy;
2. The tenant agrees to abide by the rules of his tenancy, and he and his guests shall not disrupt others;
3. The landlord is at liberty to serve a further one month Notice, should the tenants conduct again become cause to end the tenancy.

The parties entered into a fixed term tenancy agreement that commenced June 1, 2012 and expired August 31, 2012. Although the fixed term tenancy agreement indicated the tenant was to vacate the rental unit at the end of August 2012 the parties continued with a tenancy on a month-to-month basis.

On September 28, 2012 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) with an effective date of October 31, 2012. The parties provided differing testimony as to how it was served. The landlord submitted it was served in person, in the presence of a witness, on September 28, 2012 when she requested the tenant come to the office. The tenant submitted that it was posted on his door September 28, 2012. Whichever method of service was used I was satisfied the Notice was disputed within the time limit imposed by the Act.

The Notice indicates one reason for ending the tenancy, which is 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.

The landlord submitted that the tenant has frequently disturbed other occupants by yelling, banging and coming and going from his unit, with guests, in the late night and early morning hours.

The landlord submitted that a former tenant in an adjacent unit ended her tenancy due to the disturbances caused by the tenant. The landlord submitted that other tenants have complained verbally to the landlord although they are reluctant to put their complaints in writing. The landlord had a witness standing by to testify if I determined it necessary. I did not find it necessary to call the witness during the hearing.

The landlord submitted that the tenant appears to have anger management issues and since the tenant has been served with the Notice the tenant's behaviour has become worse. On September 30, 2012 the tenant used vulgar language and hurled threats towards other tenants. The police were called twice and on the second occasion the police arrested the tenant. Then on November 6, 2012, after the landlord served the tenant with evidence, the shared bathroom toilet was found to be smashed. The cameras show the tenant as the last person to use the bathroom before it was found smashed.

The tenant acknowledged that he told another tenant "to go fuck herself" on September 28, 2012 because she accused him of being a rapist. The landlords happened to be in the building at the time and heard just one side of the story. Then he was served with the Notice. The tenant submitted that the landlords are usually not at the property and have relied heavily upon what other tenants tell them and on what they see on the camera, without asking the tenant for his side of the story.

The tenant submitted that the banging noises are from his chair rolling across gaps in the hardwood floor. The tenant explained that other noises may be coming from other

tenants since the rooms are very close together. The tenant acknowledged that on occasion he has guests visit him in his room late at night and that he is often awake at night because he has insomnia.

The tenant reluctantly acknowledged that he was arrested on September 30, 2012 at the property but claims the police did so while they tried to gather evidence against him.

The tenant acknowledged the toilet was smashed on November 6, 2012 but submitted there is insufficient evidence to prove it was him that caused the damage.

While the landlord was sympathetic to the tenant's plight, given the recurring disruption to other occupants and vandalism the landlord asked to be provided an Order of Possession as soon as possible.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

A balance of probabilities means that one party has established that it more than 50% likely that the event(s) occurred as described. This standard is much less than the criminal standard which is beyond a reasonable doubt.

Upon consideration of everything presented to me I accept, on the balance of probabilities, that the tenant has significantly interfered with or unreasonably disturbed other occupants. I make this finding considering the following factors:

- The landlord previously issued a 1 Month Notice for unreasonably disturbing other occupants or the landlord;
- In the previous dispute proceeding the settlement agreement reflects that the tenant, or his guests, had disturbed others and that the tenant promised to cease such behaviour;
- The tenant admitted swearing at another occupant on September 28, 2012; and,
- The tenant was arrested by the police due to a disruption at the property on September 30, 2012.

In light of the above, I dismiss the tenant's request to cancel the Notice. I grant the landlord's request for an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

The tenant's request to cancel the Notice has been dismissed. The landlord has been provided an Order of Possession effective two (2) days after service.

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 08, 2012.

Residential Tenancy Branch