



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 an Application for Dispute Resolution by the Tenant to cancel a 1 Month Notice to end tenancy for cause.

The parties appeared at the teleconference hearing, and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the 1 Month Notice issued November 27, 2012 be cancelled?

Background and Evidence

The Tenant submitted 27 pages of documentary evidence which included, among other things, copies of: the August 29, 2012 decision; the tenancy agreement; a medicinal society card; and medical evidence. The Landlord confirmed receipt of the Tenant's evidence.

The Landlord advised that he faxed evidence to the *Residential Tenancy Branch* four days prior to this hearing on December 17, 2012. The Tenant requested that I not consider the Landlord's documentary evidence as it was received late. He confirmed receiving the Landlord's evidence in the early evening of December 17, 2012. I note that I had not received the Landlord's evidence prior to the hearing and therefore I

would not be considering it in my decision. I informed the Landlord that he could read his evidence as oral testimony if he chose to do so.

The Landlord stated that he served the 1 Month Notice to the Tenant on November 28, 2012 because of the Tenant's usage of marihuana inside the rental unit. He argued that this marihuana usage interferes with the Tenant's neighbor and that this neighbor has written two complaint letters, one on September 17, 2012 and the other November 21, 2012.

The Landlord read portions of each letter into evidence and both alleged that the Tenant was smoking marihuana inside his rental unit and everyday day "at 7:00 p.m. the smell of pot" comes into his neighbor's apartment.

The Landlord submitted that when he received the letters he kept them on file and never discussed them with the Tenant nor did he issue the Tenant a written warning. He stated that the Tenant was well aware of this matter and ought to know the issues so he did not feel the need to bring each complaint to the Tenant. He stated that he has received many verbal complaints but that he does not act on the complaints unless they are in writing.

The Landlord advised that he lives in the building, a floor above the Tenant's unit, and he has never investigated any of the complaints. He has smelled marihuana in the past but he has never checked the rental units to determine if the marihuana was being smoked inside the unit. He argued that the Tenant had tested positive for marihuana in the past so he was of the opinion the smell had to be coming from his unit. He could not testify that the marihuana was actually being smoked inside the Tenant's unit and he can only take the testimony of other tenants. He confirmed that the complaint indicated that the smell is generated at 7:00 p.m. every night and that he has never attended the unit at 7:00 p.m. to investigate the source.

The Tenant acknowledges that he smokes marihuana for pain management and noted that he provided medical documentation that indicates he was advised to do so by his doctor, who is a specialist. He affirmed that he does not smoke the marihuana inside his apartment he smokes it outside about two blocks away. He argued that his neighbor has a long history of falsely accusing others and he wondered why the Landlord believes him.

In closing, the Landlord denied that the neighbor has a history of falsely accusing people. He pointed to the previous hearing of August 29, 2012, as proof that this issue

had been raised before and that the Tenant ought to have known the Landlord was receiving complaints.

Analysis

The Landlord did not provide copies of their evidence in accordance with section 4.2 of the *Residential Tenancy Branch Rules of Procedure* which provides that all evidence must be received by the *Residential Tenancy Branch* and must be served on the applicant as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlord has not served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, the Landlord's evidence will not be considered in my decision. I did however consider the Landlord's testimony.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

Section 47 1) (h) of the Act provides that the Landlord may end a tenancy by giving notice to end the tenancy if the tenant has not corrected the situation within a reasonable time after the landlord gives the tenant written notice to do so.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove that the neighbor's complaints that the Tenant is smoking marihuana inside his unit are founded. If the Tenant is found to be in breach of his tenancy then the Landlord must issue the Tenant written notice to correct the situation and advise the Tenant that failure to correct the situation may be cause for eviction.

In this case the Landlord acted solely on the word of another tenant, without investigating to see if the complaints were justified and without issuing the tenant with written notice to correct the situation. Based on the aforementioned I find that the Landlord has not succeeded in meeting the burden of proof for issuing the 1 Month Notice to End Tenancy issued on November 27, 2012, and I hereby cancel the Notice.

I cautioned the Landlord that if he continues to act solely on the word of another tenant, without investigating complaints or without issuing written warnings, he may be found to be harassing the Tenant if he continues to issue eviction notices without investigating allegations.

Conclusion

I HEREBY CANCEL the 1Month Notice to End Tenancy for Cause issued November 27, 2012. This tenancy continues until such time that it is ended in accordance with the Act.

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: December 21, 2012.

Residential Tenancy Branch