



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

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.

I determined that documentary evidence submitted to the Branch by the landlord had not been served upon the tenant. Under the Rules of Procedure, and as stated on the Notice of Hearing, evidence must be served upon the other party. I informed the parties that I would not accept or read the landlord's documentary evidence; however, she would be permitted to refer to and to read from those documents during the hearing.

I have amended the Application to correct the spelling of the landlord's name, as it appears on the Notice to End Tenancy.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The month-to-month tenancy commenced December 7, 2012 and the tenant is required to pay rent of \$720.00 on the 1st day of every month. There is a written tenancy agreement although neither party provided a copy of it as evidence.

The landlord served the tenant with an older version of a 1 Month Notice to End Tenancy for Cause (the Notice); however, I was satisfied that the Notice that was served conveyed information the tenant is required to receive under the Act and is misleading. Therefore, I considered the document otherwise valid and I continued to

hear whether the landlord has sufficient reason, or evidence of such, to end the tenancy.

The Notice to End Tenancy was served on February 19, 2013 and has a stated effective date of March 31, 2013. The reasons for ending the tenancy, as indicated on the Notice, are 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
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord.

In space provided on the Notice the landlord indicates she had received complaints from other tenants about excessive late night noise, including the running of the bathroom fan, and the smell of marijuana.

The landlord testified that there are "rules" that prohibit the tenant from using the premises for "illegal purposes". In the absence of a copy of the tenancy agreement I was unable to confirm that the "rules" formed a part of the tenancy agreement. The tenant did not have a copy of the tenancy agreement at the time of the hearing and indicated that he could not confirm or deny that the above "rule" formed part of the tenancy agreement.

The landlord submitted that marijuana smoke has been smelled in the common hallways. Other tenants have raised this issue with the landlord and the landlord has had a number of conversations with the tenant about the smell of marijuana smoke. When the landlord confronts the tenant about the marijuana smoke the tenant usually denies that it is coming from his unit; however, on one occasion the tenant admitted to the smoking of marijuana.

The landlord acknowledged that she had determined that another tenant in the building was responsible for the smell of marijuana smoke in the building but that particular tenant has since taken his marijuana smoking off the property and that tenancy is about

to end. Thus, the landlord is of the position that the continued smell of marijuana is coming from the tenant's rental unit. The landlord also acknowledged that cigarette smoking is permitted within units in the building and that cigarette smoke is detectible in the common hallways.

The tenant responded to the landlord's allegations by denying that there is smoking of marijuana in his unit except for one occasion where a marijuana cigarette was smoked on his balcony by a guest in February 2013. The tenant has smelled marijuana smoke in the hallways himself and has invited the landlord to come investigate it, and his unit, in an effort to demonstrate to her that the marijuana smoke is not coming from him or from within his unit.

With respect to loud noises, the landlord submitted that she received a written complaint on February 15, 2013 that there are loud noises coming from the rental unit between the hours of 2 a.m. and 4 a.m. including the sounds of: loud TV or video games; laughing, stomping, clanging from dishes being washed, and the bathroom fan running for long periods of time.

The tenant acknowledged that he is often awake in the early morning hours but denied that he plays his TV very loud and denied that video games are being played. During those hours he acknowledged that he may cook, do dishes, laugh, and run the bathroom fan. The tenant submitted that the property is very old, of wood frame construction, and that he also hears the activities of other tenants in their units.

The tenant was agreeable to ending the tenancy on a later date but the landlord was not agreeable to grant the tenant occupancy past the effective date of March 31, 2013.

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(s) indicated on the Notice.

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 claims against the other party.

I find the disputed verbal testimony concerning marijuana smoking in the rental unit to be insufficient for me to conclude the tenant or a person permitted on the property by the tenant is smoking marijuana in the unit except the one time acknowledged by the

tenant, especially when I consider another tenant is known to have smoked marijuana in the building. Nor did the landlord provided sufficient details such as dates, times and location the marijuana was smelled so as to establish that the smoke is coming from the tenant or a person permitted on the property by the tenant as opposed to someone else.

As pointed out to the parties during the hearing, while smoking a marijuana cigarette may be an illegal activity, in order to end a tenancy for illegal activity I must be satisfied that the activity is so significant disturbing or dangerous that it jeopardizes the other tenants' right to quiet enjoyment, health or safety. I find that the one known occasion where marijuana was smoke on the tenant's balcony is not so significant to meet this criterion. Further, I find I was not presented any submissions that would demonstrate that the smell of marijuana smoke is so much more unpleasant or jeopardizing to one's health than the smoke from cigarettes that is present in the common areas.

With respect to noise complaints, I find several of the noises described in the complaint letter to the landlord are consistent with normal daily activities such as: watching TV, walking, laughing, cooking, doing dishes, and using the bathroom fan. Provided the noises associated to these activities are not excessively or unreasonably loud, a tenancy cannot be ended due to the sounds associated with such normal daily activities as tenants are entitled to use the unit for exactly those purposes. It may be helpful for the landlord to remind the complainant tenants that those living in multiple-unit buildings, especially those that are older and of wood frame construction, should expect to hear noises of daily activity coming from other units and to appreciate that not everyone keeps the same schedule.

I find the complaint related to clanging from doing dishes or running the bathroom fan does not constitute excessive or unreasonable noise. I find the disputed verbal testimony provided to me is insufficient to conclude the tenant is stomping on the floor, laughing unreasonably loud, or playing his TV unreasonably loud; however, if that is the case I find it reasonable to expect the landlord issue a warning letter to the tenant to notify him of such complaints prior to issuing him an eviction notice. Therefore, I do not end the tenancy for these reasons; but, I strongly encourage the tenant to be aware of the noise transference within the building and exhibit consideration toward other occupants, especially in the early morning hours when most others are likely trying to sleep.

In light of the above, I find the landlord has not proven, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice and I cancel the Notice with the effect that the tenancy shall continue at this time.

As the tenant was successful in this application, I award the filing fee to the tenant. The tenant is authorized to deduct \$50.00 from a subsequent month's rent payment in satisfaction of this award.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued February 19, 2013 is cancelled and the tenancy continues. The tenant is authorized to deduct \$50.00 from a future month's rent to recover the filing fee from 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: March 22, 2013

Residential Tenancy Branch

