



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the Hearing, the Landlord stated that 21 pages of evidence, including the notice to end tenancy, were delivered to the Residential Tenancy Branch on Friday May 24, 2013 with additional evidence faxed yesterday. The Landlord stated that this evidence was placed in the Tenant's mailbox this morning. The Tenant stated that she did not have this evidence package. The Landlord stated that he did not want an adjournment in order for this evidence package to be received and considered. The Tenant confirmed receipt of the notice to end tenancy and its contents.

Residential Tenancy Rules of Procedure require that evidence for a dispute must be provided to the other party and to the Residential Tenancy Branch five days in advance of the Hearing. Given that the Landlord did not serve the Tenant the evidence package within the time required and considering the prejudice to the Tenant that would arise from accepting this late evidence for the Hearing, I decline to consider this documentary

evidence. Given the Tenant's oral evidence confirming receipt of the notice to end tenancy and its contents, I accept that such a notice was served to the Tenant.

Issue(s) to be Decided

Does the Landlord have sufficient cause to end the tenancy?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on May 1, 2009. Rent of \$550.00 is payable monthly. On May 24, 2013 the Tenant was personally served with a one month notice to end tenancy for cause (the "Notice"). The Notice lists the following reasons for ending the tenancy:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; and
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The Tenant rents a suite in a house containing six units and the house is located on an acreage on which the Agent, the Landlord's husband, also lives. The Landlord has been living in another province over the past year but returns periodically. The Landlord's daughter lives in the house containing the Tenant's unit. The Agent states that other tenants have complained about the Tenant, that one tenant ended the tenancy due to noise made by the Tenant and her guests and due to being offered a drug by the Tenant's boyfriend. The Agent states that since October 2012 the police have been called to disturbances by the Tenant on eight occasions and that three of those occasions have been within the last week. The Agent states that the Tenant has also allowed a guest to roam around the property at midnight. The Agent states that on

May 20, 2013, the Tenant held a yard sale, that the Tenant was told to remove the yard sale and that the Landlord called the police. The Landlord states that the Tenant's boyfriend threatened the Landlord by telling the Landlord not to touch any of the Tenant's belongings. The Landlord agrees that there is nothing in the tenancy agreement restricting the Tenant's use of the yard.

The Witness states that since moving into the suite below the Tenant in March 2013, the Tenant has continuously had people in and making noise in the upper unit at all hours of the night. The Witness states that the Tenant also argues with her boyfriend all the time and that on one occasion while in their vehicle outside the unit, the boyfriend assaulted the Tenant but that the Witness did not call the police as they have told her to ignore the fights. The Witness states that, while in her own unit, she can hear noises from the upper floor, including threats towards her by the Tenant's boyfriend and the boyfriend slapping an aluminium bat in his hand. The Witness states that she is afraid of harm from the boyfriend, that he has threatened her and that she has been given information about victim services. The Witness states that the Tenant and her boyfriend think they own the place and can do what they want. The Witness states that she is constantly bothered by the Tenant by such things as turning on loud music and then leaving, using a leaf blower, and working outside at all hours of the night. The Witness states that she has called the police on several occasions and that the Tenant tells the Witness that her friends are all laughing at the Witness.

The Tenant denies causing any disturbance, states that the Witness has continuously called the police for no reason and states that the Witness judges the Tenant. The Tenant states that there have never been any police charges as a result of their attendance as there was never anything being done. The Tenant states that her boyfriend does not assault her and that the police told her that they would not respond to calls to her unit anymore. The Tenant states that she believes the Witness is tormenting the Tenant on purpose. The Tenant states that she also only three friends who come over on occasion, that she does not drink, does not play loud music, there is no drug used in her unit or being offered from her unit and that other tenants smoke

marihuana in their units. The Tenant states that she does work late at night on her collection of goods for resale but that she works quietly. The Tenant states that the tenant who moved out of the house moved out for other reasons and that the Tenant was told by another tenant that although asked, this tenant refused to write a letter of complaint about the Tenant.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Considering that the Landlord's evidence of illegal activity in relation to drugs comes only from indirect evidence of a previous tenant, and considering the Tenant's straightforward denial of such activity and the Tenant's also indirect evidence of that previous tenant's refusal to make a complaint about the Tenant, I find that the Landlord has failed on a balance of probabilities to establish sufficient evidence to end the tenancy on the basis of an illegal activity.

The mere attendance of police to the unit does not constitute evidence of significant disturbance by a tenant without additional evidence. Considering that the tenancy agreement does not restrict the Tenant's use of the yard, I find that the Landlord's evidence of calling the police on the occasion of the Tenant's yard sale tends to support the Tenant's evidence that she is being harassed with calls to police. I do not find the evidence that the Tenant's boyfriend told the Landlord not to touch the Tenant's belongings to be a threat of harm as this could be more reasonably seen as the assertion of the Tenant's rights given the situation. I do not find that a guest simply being outside on the property at midnight on one occasion to be significant interference or disturbance.

Although the Landlord's Witness states that she has been threatened, her evidence of such threats is based on hearing conversations and sounds coming from the Tenant's unit. While the Witness has provided evidence of noise disturbance from the Tenant's

unit, I find this evidence to be somewhat exaggerated. This finding is supported by the evidence of both Parties that the police are no longer responding to complaints and that the Witness was told to ignore the arguments of the Tenant and her boyfriend. Violence against women is a serious matter and I do not find it reasonable that the police would tell a witness of such violence to ignore arguments unless there was nothing to substantiate the occurrence of violence or threats. I note that no other tenants, including the daughter of the Landlord who lives in the same house, were called as Witnesses to provide evidence of noise or other disturbance coming from the Tenant's unit.

Ending a tenancy is a serious matter. As a result of the above findings and considering the overall evidence of both Parties, I am not satisfied on a balance of probabilities that the Landlord has provided sufficient evidence of significant interference or unreasonable disturbance. I find therefore that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

Conclusion

The Notice is cancelled.

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: June 3, 2013

