



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROSE HOTELS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery mail on April 4, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started approximately 7 months ago as a verbal month to month tenancy. The Landlord said he purchased the building on February 28, 2014 and there were no records regarding the tenancies except a role of tenants’ names and the units they occupied. Rent is \$375.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$200.00 on October 7, 2013.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated March 28, 2014 by personal delivery on March 28, 2014. The Effective Vacancy Date on the Notice is April 30, 2014. The Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of other occupants, putting the landlord property at significant risk and significantly interfering with or unreasonably disturbing another tenant or the landlord. As well the Landlord said the Tenant has engaged in illegal activities that is likely to damage the property adversely affect the safety in the building and jeopardize rights or interest of other tenants or the landlord.

The Landlord said prior to purchasing the rental complex there were significant drug activities taking place at the building. Since he has taken ownership he is trying to clean the building up and remove the drug trafficking activities. The Landlord said there are a number of tenants in the building with drug and alcohol addictions and he is not targeting these tenants. The Landlord said he has issued eviction notices to tenants that he believes are trafficking drugs out of the building. The Landlord continued to say that his observations of the activity around the Tenant and the Tenant's room indicate to him the Tenant is trafficking drugs. The Landlord said there has been up to 100 to 300 persons visiting the Tenants room each day and the visits are for only a few minutes each. The Landlord said he believes the Tenant is selling drugs. In addition the Landlord said he believes that known drug dealers are visiting and staying in the Tenant's unit and this confirms in the Landlord's mind that the Tenant is involved in the drug trade. The Landlord said he has issued eviction Notices to all the tenants that he believes are selling drugs in the building and the Tenant in this application is one of the tenants the Landlord has issued a 1 Month Notice to End Tenancy for Cause to.

The Tenant said he moved into this unit he is in about 7 months ago and prior to him moving into this unit drugs were being sold out of the unit. As a result many of the drug uses keep coming back to his room, but the Tenant said he is not selling drugs and he is not involve in the drug trade. The Tenant said the Landlord is mistaken and he does not want to move as he would be homeless.

The Tenant called a Witness G.I. to support his testimony. The Witness G.I. said the building was a very bad drug scene prior to the new owners/ Landlord purchasing the building. The Witness said things are improving, but it will take time to stop people coming around looking to buy drugs. The Witness continued to say that the Tenant is not a drug dealer and that people are coming to his room because drugs were sold from there in the past. The Witness agreed with the Landlord that people coming to the building has probably dropped from 300 per night to 100 per night. The Witness said that the Landlord may have mistaken the Tenant as a drug dealer because of the people coming to the Tenant's room looking for drugs. The Tenant and the Witness said they tell the people to go away and don't come back.

The Landlord questioned the Witness about the known drug dealers visiting and staying in the Tenant's rental unit. The Witness said he has not see the person the Landlord is referring to in at least two weeks and he did not know if that person actually visited the Tenant before. The Witness said there were no other people living in the Tenant's unit with the Tenant.

The Landlord said he understood that it is basically his word against the Tenant's word and that at this point he has only submitted his observations of the situation, but if he is not successful in ending the tenancy he will reapply under a new Notice to End Tenancy and he will submit corroborating evidence to support his claims.

The Tenant said in closing that the Landlord is mistaken and he is not selling drugs and so the Notice to End Tenancy dated March 28, 2014 should be canceled.

The Landlord said in closing that this is a difficult situation to prove as other tenants do not want to testify and at this point he is not in possession of the Police reports. The Landlord said he will make another application if this Notice to End Tenancy is unsuccessful.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. The Landlord is adamant that the Tenant is sell drugs from his rental unit and this is cause to evict the Tenant. The Tenant says the Landlord is mistaken and he is not selling drugs from his room. The Landlord has not provided any corroborative evidence and the Tenant provided a Witness who gave affirmed testimony that the Tenant was not selling drugs from his rental unit. Consequently, the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not been proven and have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. The burden of proving a claim lies with the Landlord when issuing a Notice to End Tenancy and when it is just the Landlord's word against that of the Tenant's that burden of proof is not met.

I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date March 28, 2014 to be cancelled and the tenancy is ordered to continue as verbally agreed to.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the June, 2014 rent. The June, 2014 rent is adjusted to \$325.00.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated March 28, 2014 to be cancelled and the tenancy is ordered to continue as agreed to.

The June, 2014 rent payment is adjusted to \$325.00 so that the Tenant can recover the filing fee of \$50.00 for this proceeding 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: April 30, 2014

Residential Tenancy Branch

