



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 by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

The Tenant appeared for the hearing with an advocate and also called a witness during the hearing. All testimony provided by the parties was given under affirmation and the parties were given the opportunity to cross examine each other on the evidence.

Preliminary Issues

The Tenant provided a copy of the Notice in written evidence prior to this hearing.

The Landlord confirmed receipt of the Tenant’s Application to cancel the Notice. There was no submission of written evidence by the Landlord prior to this hearing. When the Landlord was asked to confirm this, the Landlord explained that he had submitted written evidence prior to the hearing by fax. However, this evidence was no before me and there is no record of any evidence being received from the Landlord from the electronic records related to this file.

The Tenant denied receipt of any written evidence prior to the hearing even though the Landlord submitted that he had served this to the Tenant personally.

In the absence of sufficient evidence to indicate that the Landlord had indeed submitted documentary evidence prior to this hearing, I explained to the Landlord the burden of proof that a Landlord bears when a Notice is disputed by a Tenant and my intention to continue with the proceedings. The Landlord insisted on continuing with the proceedings relying solely on his oral testimony to prove the Notice.

Issue(s) to be Decided

Has the Tenant established that the Notice ought to be cancelled?

Background and Evidence

Both parties agreed that this tenancy started on October 1, 2013 on a month to month basis. Rent under the written tenancy agreement is payable by the Tenant to the Landlord in the amount of \$375.00 on the first day of each month.

In the Landlord's testimony, he alleged that the Tenant is trafficking drugs into the building and that recently her rental suite had been raided by the police and that a case relating to this was being progressed through the courts.

The Landlord testified that he had received many complaints about the Tenant regarding her drug activity from other residents in the building and that this was creating a disturbance through excessive and loud noise.

The Landlord alleges that the Tenant often jams the front entrance of the building because access in and out of the building is controlled by an intercom system, and that this is being done for the purposes of facilitating drug traffickers into her rental suite.

The Landlord also testified that the Tenant was responsible for a fire in her rental suite and that she had a history of creating fires in her previous tenancies.

As a result, the Landlord served the Tenant with the Notice on August 29, 2014 by posting it on the Tenant's door. The Notice shows that the reasons for ending the tenancy were because the Tenant is alleged to have allowed herself and other people to significantly interfere with or unreasonably disturb other occupants or the Landlord, and the Tenant is alleged to have engaged in an illegal activity that has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant or the Landlord. The Tenant confirmed receipt of the Notice on her door on August 30, 2014 and made the Application to dispute the Notice on September 8, 2014.

The Tenant disputed the Landlord's allegations and testimony. The Tenant explained that her rental suite was located close to the entrance of the building and often she has unknown members of the public knocking her window asking for access to the building, thereby giving the Landlord the impression that she is selling drugs. The Tenant explained that there are several young residents in the building that are engaged in selling drugs and causing noise disturbances for which she is being blamed for.

The Tenant testified that she did previously jam the front door of the building but this was only because she was given one key for another entrance while the Landlord was in the process of getting a key for the second entrance; and that she jammed it open to facilitate easier access into the building with her shopping.

The Tenant explained that she was woken up by her cat after smoke started to accumulate in the unit from a small cigarette fire. The Tenant explained that at the time the Landlord's wife was in the hallway and knocked on the door to see what the problem was. The Tenant testified that she quickly put the small amount of smouldering smoke out and no fire services were called.

The Tenant called a witness, who was a rehabilitation worker that often frequented the building to perform his duties to the residents of the building. The witness testified that he frequents the building several times in the week and on each occasion he often sees members of the public entering the building behind residents. The witness testified that none of the residents answer the intercom system because they know that the calls are mainly from people who are not authorised to come into the building and knows of only three residents that do answer the intercom, one of whom is the Tenant. Following from this evidence, the Tenant submitted that she has no need to jam the front door of the building. The witness also confirmed that the Tenant's rental suite is located close to the entrance of the building.

The Landlord confirmed that the Tenant had not been provided with a key to one of the entrances to the building and that one was provided after the locks were changed. The Landlord was given an opportunity to rebut the Tenant's testimony and cross examine the Tenant's witness but choose not to do so, but made a verbal request for an Order of Possession.

Analysis

Firstly, I find that the Landlord served the Tenant with a Notice that complied with the Act. Secondly, I find that the Tenant made the Application to dispute the Notice within the time limits stipulated by Section 47(4) of the Act.

When a Landlord issues a Tenant with a Notice for the reasons in this case, the Landlord bears the burden of proof in proving the reasons on the Notice disputed by the Tenant. In this case, I find that the Landlord has failed to provide sufficient evidence to prove the Notice. The Landlord relied solely on his oral testimony as evidence of the reasons on the Notice and such serious allegations would require the need for documentary or corroborating evidence to support the Landlord's testimony which was

disputed by the Tenant. Therefore, the oral evidence resulted in one party's word against the others.

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 must fail.

In this case, I find that the Tenant has provided plausible explanations in response to the Landlord's allegations and this is further supported and corroborated by the Tenant's witness.

The Landlord testified to drug trafficking allegations, court proceedings involving the Tenant, fires created by the Tenant and complaints from other residents. It would be reasonable in these circumstances to expect that the Landlord would be able to support these allegations through other means other than relying on his verbal submissions which were not substantiated by other evidence.

I find that the lack of any documentary evidence such as witness statements, complaint letters, court documents, fire reports, video footage and witness testimony, does not convince me that the Landlord has met the burden of proof in this case. Therefore, I find that the Landlord's evidence is no more compelling than the Tenant's evidence and therefore, the Landlord has not proved the Notice.

Conclusion

For the reasons set out above, I cancel the Notice dated August 29, 2014. The tenancy will continue until 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: October 29, 2014

