



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 the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord did not make any application nor did the landlord request anything specific at the hearing.

Issue to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

This tenancy began August 1, 2014 on a month to month basis with a rental amount of \$750.00. The property manager testified that he has received complaints with respect to this tenant since she moved in and that the level of complaint has escalated in the last sixty days. He testified that more than one occupant of the premises has indicated that they may move because of the disruption by the tenant.

Submitted into evidence was a copy of the 1 Month Notice to End Tenancy dated November 30, 2014 showing an effective date of December 31, 2014 and other evidentiary material submitted by the landlord. The tenant did not dispute the property manager's sworn testimony that he personally served the 1 Month Notice to the tenant in the presence of a witness on November 30, 2014. Pursuant to section 88 of the Act, I find the tenant duly served with the 1 Month Notice.

In response to the 1 Month Notice, the tenant filed for Dispute Resolution on December 4, 2014. The landlord confirmed the tenant's testimony that the Application for Dispute Resolution package was served in person on December 8, 2014.

In providing a 1 Month Notice to End Tenancy, the landlord claims that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant. Evidence from the landlord included two written statements from other occupants of the residential property and one letter from an employee ("the cleaner") of the landlord. The property manager testified that he has received many other verbal complaints over the past 60 days from occupants of the residential property regarding noise and "petty theft".

The landlord provided a letter dated August 17, 2014 that states the tenant's unit has a strong odour of "pot" coming from inside as well as cigarette smoke. The landlord also provided a letter dated November 5, 2014 that states the tenant slams doors, "stomps around" and talks loudly on her phone on her patio "at all hours of the night".

The strata manager for the residential property testified that he has been advised of issues and complaints by the property manager and strata council members who live in the same building as the tenant.

A letter dated November 20, 2014 was submitted by the landlord. It was prepared by an employee who is a cleaner at the residential premises. She provided a detailed description of the theft of her jacket and identified the tenant as the culprit. She was able to note that, approximately 5 weeks later, she saw the tenant wearing her jacket.

The tenant denied all of the landlord's allegations of noise and disturbance and testified that the landlord had never issued a written warning related to complaints against her. She did not deny that complaints had been made by other occupants or that she was made aware of those complaints. The tenant responded to the claims against her stating that she has a 10 month old son and so does not smoke in her rental unit or make any loud noises, including slamming doors. She also stated that she does not talk on the phone as she is always watching her son. However, the tenant also confirmed the testimony of the property manager that, when he had approached her regarding a complaint, she had stated, "it's just what it is".

The property manager provided undisputed testimony that he had spoken to the tenant on a number of occasions regarding the complaint in hopes that she would revise her behavior. While he provided no written warnings to the tenant, the tenant's testimony at this hearing supported his testimony that he spoke to her on more than one occasion regarding the complaints, that she was aware of the complaints and that he may take further action with respect to her tenancy if the complaints continued.

Analysis

The tenant's position is that the landlord has not proven that the 1 Month Notice to End Tenancy for Cause was warranted and it should be cancelled. The burden of proof lies on the landlord on a balance of probabilities to justify the notice to end tenancy.

As proof, the landlord provided documentary evidence including letters of complaint. The landlord also provided two representatives to testify with respect to this matter. I accept the landlord's submissions, finding them substantiated by the evidence, that there were numerous complaints with respect to this tenant and that the landlord made attempts to warn the tenant to correct her behaviour. This evidence, primarily from the landlord's documentary evidence and the testimony of the property manager, was credible and the evidence of complaints was not substantially disputed by the tenant. The evidence supports the landlord's position that the tenant significantly interferes with and unreasonably disturbs other occupants of the residential premises.

Based on the documentary evidence presented by the landlord, the tenant has engaged in some disturbance of other occupants by stomping, talking loudly on the patio and slamming doors. Section 28 of the Act protects a tenant's right to quiet enjoyment. This right applies equally to all residents in the complex. The testimony of the property manager is that the tenant has affected the quiet enjoyment of a number of occupants. The testimony of both landlord witnesses is that the level of disturbance, and the number of verbal complaints against the tenant, has increased. He submits the tenant's behaviour has impacted the landlord as well as the other occupants.

The tenant denies all allegations of poor or disruptive behaviour. It is the circumstances of the theft allegation and the documented complaints of smoke within the building that raise the landlord's level of proof to meet their burden. I find that a landlord is under some obligation to issue a warning to ensure the tenant understands the complaints and allegations that are being brought against her. Ending a tenancy is a serious matter and it is a fundamental principle of natural justice that a party is entitled to be aware of the consequences of their actions and an opportunity to correct their behaviour. I accept the evidence of the landlord that several verbal warnings have been given to the tenant. It should have been clear to the tenant that the alleged conduct associated with the lodged complaints may risk termination of her tenancy if the conduct continued.

I find that the landlord has met the burden of proof on a balance of probabilities such that any annoying or unreasonable, disruptive conduct has reached the threshold where termination is necessary.

Given the above, I dismiss the tenant's application to cancel the One Month Notice with the effect that this tenancy ended on the effective date set out on that Notice, that is, December 31, 2014. The landlord made no request or application at this hearing.

Conclusion

I dismiss the tenant's application to cancel the One Month Notice, with the effect that this tenancy ended on December 31, 2014.

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: January 15, 2015

Residential Tenancy Branch

