



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The tenant and the landlord's agents (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and for orders for the landlord?

Background and Evidence

The written tenancy agreement shows that this tenancy began on December 1, 2014; the tenant submitted he moved into the rental unit on December 15, 2014.

According to the landlord's evidence, the landlord filed an application for dispute resolution for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act and a hearing on that application took place on January 12, 2015. In a January 13, 2015, Decision, another Arbitrator considered the evidence of the landlord that the tenant had significantly disturbed another occupant of the residential property. The other Arbitrator found that the tenant, on December 24, 2014, did significantly disturb another occupant of the residential property, but further went on to find that the isolated incident of that date was not sufficient to determine it would be unreasonable or unfair to the landlord to wait for a notice to end the tenancy issued under section 47 of the Act to take effect. The other Arbitrator dismissed the landlord's application, further stating that the landlord was at liberty to issue the tenant a 1 Month Notice.

In the present case, the landlord submitted that the tenant was served the Notice, dated January 21, 2015, listing an effective move-out date of February 28, 2015. The tenant submitted he received the Notice on January 23, 2015.

The causes as listed on the Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In support of their application, the landlord submitted evidence regarding an incident on December 24, 2014, the same incident as considered in the January 12, 2015, hearing; however, the landlord submitted further that he did not believe the tenant was being truthful in that hearing when he denied consuming alcohol, as the other landlord's agent attending this hearing, YB, smelled alcohol on the tenant at the start of the tenancy. I note that YB did attend the hearing of January 12, 2015.

It is also important to note that the incident of December 24, 2014, was discussed at length and dealt with in the Decision of January 13, 2015, and would be important to read in conjunction with this Decision. The landlord confirmed that that the basis of this Notice was the incident of December 24, 2014, and that no other incident before or after has occurred.

The landlord submitted that he believed the behaviour of the tenant on December 24, 2014, in which the tenant was alleged to have been shouting, tearing down decorations, and acting erratically, was as the result of the tenant mixing prescription drugs and alcohol.

In response, tenant submitted that he is taking at least 3 other prescription medications for a back injury and that he took another one, given to him by his doctor, leading to a bad reaction. The tenant explained that he was not aware he had behaved in the way described by the landlord, as his next remembrance was waking up in the hospital with an intravenous needle in his arm.

The tenant vehemently denied consuming alcohol, as this would nullify the effects of his pain medication.

Analysis

Based on the oral and written evidence provided, and on a balance of probabilities, I find as follows:

I grant the tenant's application and I set aside the 1 Month Notice to End Tenancy for Cause, dated January 21, 2015.

The issue before me was not whether the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord. That issue was determined by the other Arbitrator in the Decision of January 13, 2015, as mentioned herein, and I therefore cannot re-decide that issue as I am bound by that Decision.

The issue before me was whether or not the isolated incident of December 24, 2014, was sufficient to end this tenancy and I find that it is not. I do not find that the landlord submitted sufficient evidence to convince me that the tenant was even aware of his behaviour, due to a reaction to the combination of prescription drugs prescribed by his doctor, and I accept the tenant's testimony that when he learned what caused this incident, he flushed the remaining drug samples as given by his doctor as an experiment in conjunction with his other 3 prescriptions.

I am not persuaded that one isolated incident by the tenant is enough to end this tenancy, especially in light of there being no other recurrences.

I find that the landlord has failed to establish sufficient grounds to end this tenancy pursuant to section 47(d)(i) and (ii). I therefore order that the Notice be cancelled and the tenancy continues until it may otherwise end under the Act.

As to the tenant's request for an order requiring the landlord to comply with the Act, the tenant did not provide any evidence as to why he made this request or to which section he referred. I therefore dismiss this portion of the tenant's application.

Conclusion

The tenant's application for an order canceling the landlord's Notice is granted.

The tenant's application seeking an order for the landlord's compliance with the Act is dismissed.

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: February 22, 2015

Residential Tenancy Branch

