



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESCENT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF

Introduction

Both parties attended the hearing and confirmed service of the Notice to End Tenancy dated October 29, 2015 to be effective December 31, 2015 by posting on the door and personal service of the Application for Dispute Resolution. I find the documents were legally served for the purposes of this hearing. The landlord noted they had not received the evidence of the tenant. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To order the landlord to have another tenant cease and desist from disturbing the peaceful enjoyment of the tenant contrary to section 28 of the Act; and
- c) To recover the filing fee for this Application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief?

Has the tenant proved on the balance of probabilities that his peaceful enjoyment is being infringed contrary to section 28 of the Act and that the landlord is negligent in dealing with this?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 2012 in another unit and on December 15, 2014 in the present unit. Rent is \$449 a month and the tenant pays \$320 of this. A security deposit of \$224.50 was paid in December 2014. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord and breached a material term of the tenancy agreement.

The parties agreed that the main reason for the Notice to End Tenancy was the fact that the tenant threw an empty beer can at another tenant. At the time, the other tenant said he would press charges but he changed his mind. The parties turned their minds to an acceptable settlement of this matter. They agreed to settle on the following terms and conditions:

Settlement Agreement:

- 1. The Notice to End Tenancy dated October 29, 2015 to be effective December 31, 2015 is set aside and cancelled.**
- 2. The tenant's file will have a notation that "The tenant admits he threw an empty beer can at another tenant on October 27, 2015 but no charges were laid".**
- 3. The advocate will fax a copy of the evidence of the three other tenants' complaints to the landlord and the landlord will address the issues of disturbance of peaceful enjoyment with the offending tenant.**

Included with the evidence is a copy of the Notice to End Tenancy, a landlord's letter re. assault and three letters from other tenants in support of this tenant and complaining about the behaviour of another tenant as he solicits for his church.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

On the basis of the above noted settlement agreement, I hereby set aside the Notice to End Tenancy dated October 29, 2015 to be effective December 31, 2015. The tenancy is reinstated and a notation will be placed in the tenant's file with the wording as noted.

I find the tenant did not serve the landlord with the evidence of the complaints of other tenants to support his allegation of the disturbance of his peaceful enjoyment contrary to section 28 of the Act. I find no record that he has complained previously of this matter to the landlord. Therefore I find no evidence that the landlord through act or neglect has failed to protect his quiet enjoyment. However, I find the landlord in good faith as offered to address the issues with the offending tenant when they have received the evidence which is to be faxed by the advocate.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated October 29, 2015 is hereby set aside and cancelled. The tenancy continues. I find him not entitled to recover his filing fee.

I find the tenant did admit to the offending behaviour and failed to serve his supporting evidence to the landlord. He was successful as the parties were able to reach a Settlement Agreement in the hearing. I find it not appropriate in these circumstances to award him the filing fee as this deprives the landlord of some income and I find that the landlord behaved correctly and legally in the situation.

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 06, 2016

Residential Tenancy Branch

