



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for cause, and a request for recovery of the filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for cause.

A substantial amount of documentary evidence, photo evidence, video evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the landlord has reasonable grounds to end this tenancy with a one-month notice.

Background and Evidence

This tenancy began on July 1, 2012 and the present monthly rent is \$500.00 due on the first of each month.

On August 10, 2016, the landlord posted a one month Notice to End Tenancy on the tenants door giving the following reasons:

Tenant or person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturb another occupant or the landlord.
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Tenant has engaged in illegal activity that has, or is likely to:

- Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that he and his parents live upstairs at this rental property, and the tenant lives in the basement suite.

The landlord further testified that he wants to live separately from his parents, and therefore he gave the tenant a, hand written, one month notice to vacate the rental unit so he could move in.

The landlord further testified that, after giving the notice, the tenant became abusive, that he came up on their deck and called them black bastards and has stated that he will set fire to the home on numerous occasions.

The landlord further testified that the tenant is a heavy smoker and even with the furnace turned off; smoke comes up through the vents and is very annoying.

The landlord therefore states that on August 10, 2016 they gave the tenant a one-month Notice to End Tenancy due to his abusive behavior.

The landlord is therefore requesting an Order of Possession for as soon as possible and an order for recovery of his \$100.00 filing fee.

The tenant testified that he has not been abusive to the landlord, and in fact it is the landlord that is being abusive, frequently spying on him when he's in the backyard of the rental property.

The tenant further testified that he has never called the landlords a black bastard and has never threatened to set the house on fire. He further states that on one occasion, in anger he did call the landlord a Hindu; however it was after much provocation from the landlord.

The tenant further testified that he believes the landlords fabricated this claim just to get him to move out of the rental property because he objected to not getting a proper Notice to End Tenancy, and because it filed a complaint with the police about the landlord.

The landlord responded to the tenants testimony by stating that the notice has nothing to do with any police reports, it simply because the tenant has become abusive and threatening ever since he requested that the tenant vacate the rental unit so that he could move in.

Analysis

It is my finding that the landlord has not met the burden of proving that the tenant has been acting in an abusive and threatening manner.

The landlord claims that the tenant has been calling them black bastards and threatening to burn down the rental unit; however the video evidence provided by the landlord does not show the tenant making any such threats, and although the tenant did call him a Hindu, and is clearly upset, it is not clear from the video what led up to this incident, and whether there was any provocation on the part of the landlord, as claimed by the tenant.

Further, it appears that this Notice to End Tenancy may not have been given in good faith as it was given shortly after the tenant rejected the landlord's improper hand written 1 month Notice to End Tenancy for landlord use.

Section 49(2) of the Residential Tenancy Act states:

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Further section 52 of the Residential Tenancy Act states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In this case, the hand written notice given by the landlord was not only, not in the approved form, it did not give the tenant the required two clear months' notice, and makes no mention of the compensation required when a Notice to End Tenancy is given for landlord use. It is therefore understandable that the tenant rejected this notice.

I find it very to coincidental that the landlord served the tenant with a one-month Notice to End Tenancy for cause, almost immediately after the tenant rejected the improper notice, and I find it more likely that the landlord is trying to get the tenant to vacate with one-month notice and avoid having to give the proper two month Notice to End Tenancy and the required compensation.

It is my decision therefore, that the landlord has not established grounds to end this tenancy with a one-month Notice to End Tenancy, and if the landlord wishes to move into this rental unit, the landlord must serve the tenant with the proper two month Notice to End Tenancy, in the approved form.

Conclusion

The one-month Notice to End Tenancy dated August 10, 2016 is hereby canceled and this tenancy continues.

The landlord's application is dismissed in full without leave to reapply.

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 11, 2016

Residential Tenancy Branch

