



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNC

Introduction

This matter dealt with an application by the tenant to cancel a notice to end tenancy for cause as issued on September 29, 2008. The effective date of the notice by which the tenant was to vacate is October 31, 2008.

The landlord and the tenant appeared at the hearing which was held via teleconference. I advised both parties that I would consider the written documentation which had been submitted prior to the hearing, as well as any oral evidence presented at the hearing, in reaching my decision.

The landlord at the hearing requested an order of possession and agreed due to the late date of this hearing, that he requests an effective date to vacate of November 30, 2008.

Issue(s) to be Decided

Is the notice to end tenancy for cause as issued by the landlord valid?

If the notice is valid, is the landlord entitled to an order of possession?

Background and Evidence

The landlord's notice as issued cites the following reasons to end the tenancy:

Tenant or a person permitted on the residential property by the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- put the landlord's property at significant risk

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

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

The evidence submitted by the landlord consisted of two letters from other tenants, as well as a letter of warning issued to this tenant on July 29, 2008. The two letters submitted as evidence from other tenants are dated in October, after the notice to end tenancy had been issued.

The oral evidence of the landlord at the hearing was that the high volume of vehicle traffic going to the tenant's rental unit was evidence of drug activity. The landlord did not present any evidence to substantiate that claim at the hearing.

The landlord's evidence attempted to draw a direct line from alleged drug dealing to a "significant risk" of damage to the property as "those types of people could lead to negative consequences". Again the landlord has not provided any evidence of who "those types" of people are, or what illegal activity they may or may not be engaged in.

The landlord was also unable to provide information to what period of time the alleged complaints from other tenants covered, nor of the number of complaints and specifics of the alleged complaints.

The tenant provided written letters of support from fellow tenants on either side of her rental unit. These letters indicate a level of support and also indicate that as the closest neighbours to the tenant they have not witnessed the type of activity alleged by the landlord.

The tenant at the hearing denies the allegation of drug activity and draws attention to fact that there are no documented records of other complaints or the alleged time frames when they occurred.

Analysis

The landlord's notice contains serious allegations, the proof of any one of which would be sufficient grounds to end the tenancy. The burden of that proof falls upon the landlord to present evidence that substantiates the allegations.

I find that the landlord has not presented any credible evidence which would prove the allegations cited in the notice. The landlord's oral evidence at the hearing was pure speculation and conjecture and was not supported in any way.

The evidence of the tenant's neighbours is supportive and as the ones who are most likely to be affected gives credibility to the tenant's denial of the allegations.

Conclusion

I find that the landlord has not met the required burden of proof that there is cause to end the tenancy, and I therefore cancel the notice to end tenancy issued on September 29, 2008. The tenancy will continue.

Dated: October 31, 2008