



Dispute Resolution Services

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

DECISION

Dispute Codes:

CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant to cancel a one (1) month notice to end tenancy for cause issued by the landlord on December 04, 2008, with an effective date of January 31, 2009 and for a monetary order for loss arising from the circumstances and conduct of the landlord related to an incident giving rise to the one month notice for cause, and inclusive of recovery of the filing fee associated with this application.

Both the tenant and the landlord were represented in the conference call proceedings. All parties provided sworn testimony under solemn affirmation. The landlord did not file an application for dispute resolution requesting an order of possession and did not verbally request an order of possession within the hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began approximately 8 years ago. The rent is in the amount of \$849 per month.

Both parties are in agreement that to date the tenancy, over the past 8 years, has experienced only periodic episodes of domestic conflict between the tenant couple and that these periodic episodes have resulted in some noise complaints by other occupants of the building, concern by the building manager of the day, and have included two (2) attendances by police due to the couple's conduct. There has also been attendance by emergency medical responders as a result of the couple's conduct.

In particular, the testimony and the evidence submitted refers to an incident of domestic conflict within the subject rental unit arising on December 01, 2008, to which the landlord was alerted by an occupant of the building. Due to some known history of domestic conflict in the rental unit, and due to the situation which presented itself on December 1, 2008, the landlord determined to obtain assistance from the police for them to intervene in the situation. The tenants repeatedly referred to this incident of domestic dispute as being ordinary in nature, at least for them, and that the landlord over-reacted in calling police without first investigating the situation and becoming more personally involved to determine if police intervention was warranted. The landlord testified that personally intervening in the incident was not prudent and with the known history of the couple's periodic conflicts would have presented a risk to anyone intervening. Thus, with the situation with which they were presented they took it upon themselves that calling the police was the appropriate resolve to the matter. The male tenant had left the rental unit. The police attended and interviewed the landlord and spoke to the female of the tenant couple. On their assessment of the information they gathered and on their own volition the police consequently approached and arrested the male tenant and he was subsequently charged with assault. The male tenant's arrest effectively prohibited him from attending work on December 2, 2008. After being charged, the male tenant was on a condition which legally prohibited him from being near or around the rental unit effectively prohibiting him from residing in the rental unit for what amounted to a period of 17 days. There is then evidence that Crown Counsel entered a Stay of Proceedings related to the charges and the male tenant was again able to reside in the rental unit. Three days after the incident on December 01, 2008 the landlord issued a one (1) month notice to end tenancy for cause, stating the tenant,

“seriously jeopardizing the health or safety or lawful right of another occupant or the landlord” and for the tenant engaging in an illegal activity that has or is likely to,” jeopardize a lawful right or interest of another occupant or the landlord”.

The tenant seeks a full month’s rent of **\$849** for the male tenant’s inability to reside in the rental unit for 17 days within the month. The tenant also seeks compensation for lost employment income for one day in the amount of **\$300**; and, should the notice to end tenancy be upheld the tenant seeks an accumulation of relocation fees in the amount of **\$1400**.

Analysis

Based on the testimony of both parties I find that the tenant was served with a notice to end tenancy for cause. The operative wording in the particulars of the cause for the notice references that the tenant, by their conduct, whether illegal or not, placed a serious burden or restrictions on other occupants in the building, or the landlord. On reflection of all the evidence and testimony presented by both parties, I find that, at best, the tenant’s conduct was primarily of a nuisance nature to all concerned. Being aware that the landlord did not request an order of possession at the hearing, and together with the testimony that such episodes were seldom and spread out over the eight year history of the tenancy, I find that the notice to end the tenancy is not sufficiently supported and therefore is not valid.

I also find that, as unfortunate as the circumstances of December 1, 2008 evolved; there is no evidence that they were contemplated, contrived, or planned, by the landlord when the police were called. I prefer the landlord’s review of the circumstances that on their information and history with the couple, it was not prudent for them to investigate the nature of, and first assess the severity of, the couple’s conflict before calling the police, and that any risks were rightly left for the police to mitigate. I cannot conclude from the evidence that the police were called in bad faith, or for malicious reasons. I find that the incident of December 1, 2008 was brought on by, and was the product of the tenants and for this reason any fallout from the incident must be borne by the tenants in its entirety and is not the responsibility of the landlord.

The tenant is entitled to recovery of the **\$50** filing fee.

Conclusion

The one (1) month Notice to End Tenancy for Cause is not upheld and the tenancy will continue.

The tenant's claim against the landlord for damages and losses is dismissed in its entirety.

I order that the tenant is permitted to deduct the cost of filing this application, in the amount of **\$50**, from a future rental amount.

Dated January 14, 2009