

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy issued for cause.

Service of the hearing documents was done in person on April 3, 2009, by the tenant to the landlord.

The landlord and tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, in documentary form, make submissions to me, and to cross exam the other parties.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to cancel a Notice to End Tenancy under Section 47 (4) of the *Residential Tenancy Act*

Background and Evidence

The month to month tenancy began October 1, 2006 with a current rent of \$500.00 payable on the first of each month. The tenant paid a security deposit of \$242.50 on October 1, 2006.

The landlord testified that he issued the tenant a 1 Month Notice to End Tenancy on March 27, 2009, the day after the tenant had an altercation with another resident of the building. The landlord stated that he received a telephone call from the resident's boyfriend/guest advising the landlord that the tenant was banging on their door bothering them and yelling at them to turn their music down. The landlord stated that he advised the resident's guest to call the police if the tenant continued to bother them and to keep the landlord informed.

The landlord testified that the resident's guest called the landlord a few hours later to advise that the guest had called the police. The landlord stated that he drove over to the rental unit and waited in the parking lot until the police had the tenant in their car. The landlord stated that police informed him that they were taking the tenant in for refusing arrest and that the tenant had been drinking. The landlord stated that the tenant was held in cells over night and released the next day and that to his knowledge there were no charges laid.

The landlord stated that the resident and her guest left the building prior to the police arriving.

The next day the landlord issued the 1 Month Notice to End Tenancy to the tenant and later that day the landlord received a letter from the resident which stated that the tenant had repeatedly come to the resident's door and has been bothering the resident and her guest.

The landlord testified that he had to deal with the tenant about one year ago when the tenant was drinking out on the deck and that the tenant had a verbal altercation with a business resident in the parking lot. The landlord stated that the building is comprised of business tenants in the lower level with 9 residential units above the businesses. The landlord stated that he issued the tenant a notice to end tenancy as a result of this verbal altercation but that the tenant disputed the notice and the notice was subsequently cancelled by a Dispute Resolution Officer.

The tenant testified that after the 2008 dispute resolution hearing the landlord issued all residents a memo and that the memo stated that the tenants were not allowed to consume alcohol on the deck, in the halls or public area of the building and that all residents were restricted to consuming alcohol to the inside of their rental units. The notice also stated that the tenants were not to disturb other tenants and were to be held responsible for their own actions.

The landlord testified that over the course of the past year other residents would advise the landlord that the tenant was asking them for money. The landlord said that he told the residents to tell the tenant to stop asking them for money and the landlord stated that the residents just worked things out on their own.

The landlord stated that he has not received any other written complaints about the tenant and the landlord has never issued the tenant a written warning about bothering the other residents or requesting the tenant to stop asking the other residents for money. The landlord stated that he remembers speaking to the tenant on one occasion requesting the tenant to stop asking residents for money but that he never issued a formal warning. The landlord testified that for the most part he lets the residents deal with these issues on their own.

The tenant testified that the police officer told him that they needed to diffuse the situation and so they were going to put the tenant in jail over night. The tenant confirmed that he attended a dispute resolution hearing about one year ago and that he has abided by the rules since then. The tenant stated that he hasn't been drinking outside of his apartment and that no one has complained about him borrowing money. The tenant testified that the guest of the resident in unit # 5 had lent him a bag of marihuana worth about \$100.00 and that the resident was very upset with her guest for doing this.

The tenant stated that the resident and her guest who wrote the complaint about him were playing the music on their computer really loud and that they were preventing him from watching the hockey game in his rental unit and that is why he went over there and rang the door bell to ask them to turn the music down.

The landlord testified that the resident and her guest who complained about the tenant have not been issued a notice to end tenancy. The landlord stated that several residents of this building have been known to drink and carry on. The landlord stated that the resident caretaker does mostly maintenance work and does not get involved with issues between tenants. The landlord told the tenant during the hearing that he

should call the landlord if he has problems with other tenants and not to contact the resident caretaker.

Analysis

In this instance, the burden of proof is on the landlord to prove the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The landlord has acknowledged that several residents drink and “carry on” and that the residents have worked through issues on their own in the past. The landlord testified that the tenant has never been issued any direct written warnings requesting that he change a specific behaviour or stop asking other residents for money. The landlord confirmed that there has only been one written complaint against the tenant and that the written complaint was received by the landlord after the 1 Month Notice to End Tenancy was issued.

Based on the aforementioned I find that the landlord has failed to prove the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property to a degree whereby the tenant would have known his actions would result in an eviction and hereby cancel the 1 Month Notice to End Tenancy for Cause.

Decision

I Hereby Order that the 1 Month Notice to End Tenancy, issued on March 27, 2009, is cancelled, and is of no force or effect.

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: May 21, 2009.

Dispute Resolution Officer