



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. The tenant, an agent for the landlord and a witness for the landlord all participated in the teleconference hearing.

Two preliminary issues arose at the outset of the hearing. The first issue regarded service of the tenant's application. The landlord stated that she did not receive the second page of the tenant's application. The evidence of the landlord was that she received several documents from the tenant on November 5, 2009. These documents included the first page of the tenant's application and several pages of evidence from the tenant, including notice of the time and date of the hearing, and the notice to end tenancy that the landlord had served on the tenant on October 31, 2009. The landlord's agent stated that there were a lot of papers, and when she looked at them she believed that the tenant's dispute was regarding a trailer that the landlord had required the tenant to move off the property. The landlord's agent also stated that she was sick for a couple of weeks. On November 26, 2009, the day before the hearing, the landlord contacted the Residential Tenancy Branch and discovered that the tenant had applied to cancel the notice to end tenancy for cause. The tenant's response was that he included both pages of his application on the landlord along with his evidence package, which he personally served on the landlord on November 5, 2009. I had no reason to doubt the credibility of the tenant on this point, and I found that on a balance of probabilities the tenant did serve both pages of the application on the landlord.

On November 26, 2009, the landlord submitted evidence to the Residential Tenancy Branch in reply to the tenant's application, but did not serve a copy of that evidence on the tenant. I asked the landlord whether she wished to proceed with the hearing and give testimonial evidence or request an adjournment so that she might have time to serve the tenant with a copy of the documentary evidence. The landlord stated that she wished to proceed with the hearing. I therefore proceeded with the hearing but did not admit or consider the landlord's documentary evidence in reaching my decision in this matter.

Issues(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on or about November 1, 2003. On October 31, 2009 the landlord served the tenant with a one month notice to end tenancy for cause. The notice cited several reasons for ending the tenancy, as follows:

- (1) the tenant or a person permitted on the property by the tenant has:
 - (a) significantly interfered with or unreasonably disturbed another occupant or the landlord,
 - (b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord,
 - (c) put the landlord's property at significant risk;
- (2) the tenant has engaged in illegal activity that has, or is likely to:
 - (a) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord,
 - (b) jeopardize a lawful right or interest of another occupant or the landlord;
- (3) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and

(4) Tenant knowingly gave false information to prospective tenants.

The testimony of the landlord regarding these alleged causes was as follows. The new owner took over the rental property in 2008. The landlord asked all current tenants to sign an addendum to their tenancy agreement, including a "crime-free addendum." The tenant refused to sign the addendum. When the resident manager started working for the landlord in the spring of 2009, another tenant told the manager that the tenant was a drug dealer. The manager observed drug addicts frequenting the tenant's suite. The manager received verbal complaints from other tenants about the tenant.

The tenant has been constantly harassing the manager by leaving nasty and threatening messages on her personal voicemail, and by looking for "dirt" on the manager and spreading rumours about her. The manager had a conversation with the tenant where the tenant said he has guns and knives in his suite, and the next day the manager discovered that three of the tires on her car were slashed. The manager also heard a rumour that the tenant fired a gun and shot someone in his rental unit.

When the manager did an inspection of PD's suite, she saw boxes everywhere, and she told the tenant that it was a fire hazard. The manager also inspected the tenant's storage locker, where she saw several items including bicycles that the tenant said were worth thousands of dollars, and a new flat screen TV still in its box. The manager speculated that because the tenant was on disability income and could not afford these items, he must be engaged in some illegal activity.

The tenant has been taking pictures around the property that have violated the privacy rights of other tenants. One of the photos submitted by the tenant as evidence for this hearing shows a back view of a person sitting in a wheelchair, who the landlord stated was another tenant. The other tenant did not give the tenant permission to take her picture. The tenant breached his tenancy agreement by failing to remove a trailer from the parking lot within a reasonable time after the landlord gave the tenant written notice to do so. The tenant also had a barbeque that he was asked to remove.

The tenant's response was as follows. The tenant stated that the landlord has made a lot of unfounded accusations. The tenant denied having knives or being engaged in any activity involving drugs or other illegal activity. When the landlord stated that the boxes in the tenant's suite posed a fire hazard, the tenant attended at the Fire Department, and was advised to ask the landlord what section of the Fire Act she was referring to. The tenant has training and certification regarding hazardous materials, security and safety, and the boxes in his suite do not pose a fire hazard. The tenant had an agreement with the previous owner regarding keeping his trailer on the parking lot, and he had been doing so for three or four years before the new owner asked him to move it. The tenant has removed the trailer and his barbeque, even though other tenants have been in violation of these terms. The tenant took photographs to demonstrate the violations of other tenants.

Analysis

I find that the landlord has not provided sufficient evidence to support any of the alleged causes for ending the tenancy.

The landlord's evidence regarding illegal activity of the tenant amounted to no more than unfounded allegations and speculation. Furthermore, even if the landlord had established on a balance of probabilities that the tenant or a person allowed on the property by the tenant was engaging in illegal activities, the landlord would have had to provide clear evidence that the illegal activity in question was adversely affecting the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord or jeopardizing a lawful right or interest of another occupant or the landlord.

The landlord failed to establish that the tenant was breaching any term of his tenancy agreement by storing his trailer in the parking lot. In fact, the tenant had a verbal agreement with the previous owner that specifically allowed him to keep his trailer on the parking lot. In regard to the removal of his barbeque, the landlord failed to establish

that the rule against barbeques was a material term of this tenant's tenancy agreement or that the tenant did not act in a reasonable time to remove his barbeque after receiving written notice to remove it. The landlord failed to establish that the boxes in the tenant's suite constituted a fire hazard. The landlord also failed to provide sufficient evidence to establish that the tenant knowingly provided false information to prospective tenants.

In considering the landlord's testimony and the photographic and documentary evidence of the tenant, I find there is some suggestion that the tenant has been interfering with the landlord and other tenants. However, the landlord did not provide sufficient evidence to establish that the tenant was significantly interfering with or unreasonably disturbing the landlord or other tenants. If the tenant was leaving threatening voicemail messages for the resident manager, for example, the landlord ought to have provided more detailed supporting evidence to establish this allegation. While the tenant should not have taken any photographs of other tenants without their permission, I do not find that the one photograph in the tenant's evidence, depicting the back view of one tenant from a distance, amounts to significant interference such that the landlord may end the tenancy. Furthermore, the landlord did not provide any evidence from that tenant to support the landlord's allegation of significant interference with that tenant.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues. The tenant is entitled to recovery of his \$50 filing fee, which he may deduct from his next month's rent.

Dated: November 30, 2009.

Dispute Resolution Officer