



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a Notice to End Tenancy and for an order to have the landlord comply with the Act.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1Month Notice to End Tenancy for Cause and to have the landlord comply with the Act, regulation or tenancy agreement, pursuant to sections 32 and 47 of the *Residential Tenancy Act (Act)*.

Preliminary Issue

The tenant had requested a rescheduling of the hearing because he was trying to get some written evidence from a city inspector regarding his request to have the landlord comply with the *Act*.

As part of the tenant's application was to cancel a Notice to End Tenancy I found that rescheduling the hearing would put the landlord at a disadvantage for enforcing their notice should the tenant not be successful in his application to cancel the Notice. As such, I denied the tenant's request to re-schedule.

At the end of the hearing all parties agreed to give the tenant two full business days to obtain a letter from the city inspector.

Background and Evidence

The landlord has submitted the following documents into evidence:

- A copy of a 1 Month to End Tenancy for Cause dated November 4, 2009 with an effective vacancy date of December 8, 2009, citing the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Statements from each of the two board members present describing the incident that led to the issuance of the Notice to End Tenancy.

The tenant submitted the following evidence:

- A written submission contesting the issuance of the Notice to End Tenancy;
- A written request by the applicant to reschedule the hearing, as he is pursuing some additional evidence regarding his application to have the landlord comply with the *Act*;
- The tenant's advocate submitted a letter dated December 16, 2009 indicating they continue to not be able to reach the city inspector to acquire their required documentation.

The tenancy began on September 1, 2006 as a month to month tenancy with a current subsidized monthly rent of \$296.00 due on the 1st of the month. A security deposit of \$471.50 was paid on September 1, 2006.

The Board Member provided written and verbal testimony stating that on November 4, 2009 the tenant interrupted a conversation he was having with another board member and demanded to know why they hadn't done anything about the rats in the building.

The Board Member went on to say the tenant became more and more agitated and finally left the room and the two board members continued their conversation. According to the Board Member the tenant returned wielding a slim package in his hand and shouting at the board members and held the package in a way that the Board Member felt that the tenant was going to strike him.

The tenant's testimony recounts the events in a similar way except regarding the slim package which he states was a baguette style loaf of bread and that hit the table as he was raising his arms in the air out of frustration. The tenant apologized in the hearing for his behaviour.

The Property Manager indicated that no similar incidents have occurred with this tenant in the past. She further stated the instruction she was provided after the incident was to issue a Notice to End Tenancy. The Board Member further testified that after this incident he has a great concern for the other elderly tenants in the residential property.

The tenant contends that the incident itself does not meet the thresholds required by the *Act* of significantly interfered with or unreasonably disturbed and seriously jeopardized.

The tenant is also seeking an order to have the landlord conduct a thorough inspection of the residential property for rat infestations. The tenant claims he raised the issue over a year ago and that the incident of November 4, 2009 was related to his frustration that the landlord had not done anything about the infestation.

The Property Manager's testimony was that they had previously had a rat problem in the front planters and they had contacted a pest control contractor who provided them

with advice on how to deal with the planters, the advice was followed and they have contracted with the contractor to complete monthly inspections and reports.

The tenant testified that he had contacted the city inspector to request the city complete an inspection. The Property Manager testified that the inspector had contacted the landlord and because the landlord had an active inspection program the inspector indicated no city inspection was required. Both the Property Manager and the Board Member indicated if the city wanted to complete an inspection they would welcome it.

Analysis

Section 47 of the Act does allow a landlord to end a tenancy for cause if the tenant has:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. Seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant.

It is incumbent on the landlord to prove that there was sufficient cause to justify the Notice to End Tenancy. As per the Property Manager's testimony this tenant does not have an extensive history of this type of behaviour.

While the incident was obviously disturbing to the board members involved, I find that the landlord response to the incident of not contacting the police or applying for an early end to the tenancy as allowed under Section 56 of the *Act* is inconsistent with their assertion that the incident, by itself, significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized health or safety of the landlord or other occupants.

I am also persuaded by the tenant's argument that this one incident does not meet the threshold required by the *Act*. However, the tenant should consider this notice as an official warning to correct inappropriate behaviour and that should a similar incident occur, the landlord may be able to establish sufficient grounds to constitute cause to end the tenancy.

As to the issue of the completion of a thorough inspection regarding rats in the residential property and in the absence of confirmation of any requirements or intent from the city to complete an inspection, I order that both parties abide by and accept whatever requirement is presented by the city.

Conclusion

Based on the above findings I grant the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause issued on November 4, 2009 and find the tenancy in full force and 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: December 17, 2009.

Dispute Resolution Officer