



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 the tenant's Application for Dispute Resolution to cancel a Notice to End Tenancy.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Preliminary Issue

During the hearing the landlord indicated that she had submitted some documentary and electronic evidence one week prior to the hearing. The tenant confirmed that he had received the evidence, however, the evidence was not provided to me prior to the hearing.

With the agreement of both parties, I requested that the Residential Tenancy Branch follow up to find the evidence or contact the landlord to have copies sent to me for consideration. The evidence was not found in the Branch, the landlord was contacted and provided the evidence.

Subsequent to the hearing, I received a written request from the tenant's advocate requesting, under the Dispute Resolution Proceedings Rules of Procedure Rule 14.1 to allow the applicant to submit additional evidence.

Rule 14.1 allows a Dispute Resolution Officer to accept additional evidence after a hearing but before the proceeding is concluded. The Rule requires that the other party is also allowed an opportunity to respond with specific dates outlined for submission.

As the tenant had the evidence, prior to the hearing and was able to speak to the evidence during the hearing I find that if the tenant wanted to provide a witness he had an opportunity to attend the hearing and I will not accept further submissions.

Background and Evidence

The tenancy began on June 1, 2006 as a month to month tenancy with current monthly rent of \$390.00 due on the 1st of the month with a security deposit of \$187.50 paid on June 1, 2006.

The tenant provided into evidence the following documents:

- 8 letters of reference from other tenants and from members of a Co-op the tenant belongs to;
- A written response to the 1 Month Notice to End Tenancy for Cause; and
- A copy of a 1 Month Notice to End Tenancy for Cause, dated October 30, 2009 with an effective vacancy date of November 30, 2009, citing that the tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

The landlord has submitted the following:

- A summary of events leading to the issuance of the Notice to End Tenancy;
- Previously issued warning letters dated June 25, 2009, January 22, 2009, and December 22, 2007; and
- A DVD with two video surveillance recordings of the tenant in the hallway of the residential property carrying a knife.

The landlord's summary outlines that the tenant had been issued warning letters on the following dates and for the following reasons:

Date	Reason
December 22, 2007	Warning - Disturbances and setting off the smoke alarm due to late night cooking
January 22, 2009	A Final Warning – letting an unregistered guest into the hotel and let her go into the hotel unaccompanied – breaking 2 of the 9 hotel rules.
June 25, 2009	Asking the tenant to not interrupt staff if they are with other tenants, potential tenants, or visitors.

The electronic evidence was date stamped as October 15, 2009. The video recordings show the tenant walking through the hallway on two different floors with a knife. At one point the tenant walks out of view and returns within a short period of time. When the tenant is walking away from the camera an object appears to fly through the air and fall out of sight.

The tenant bends down in the area where the object fell and stands up again. When the tenant is standing there another person walks very closely passed the tenant and exits the hallway into another room.

The landlord confirmed by her testimony that the police were not called as a result of the incident as it had been reported the following day.

The tenant's written response to the notice to end tenancy primarily focuses on a disagreement he held with a staff member of the hotel but also speaks specifically to the cause issues and contends that landlord does not have evidence that the incidents leading to the issuance of the Notice are of sufficient severity to meet the threshold required by the Act.

In his testimony the tenant explains he was walking in the hallway with a large knife because he was lending it to another tenant. The landlord stated that the friend the tenant indicated lived on the same floor as the tenant and as such had no need to be on another floor with the knife as shown in the video recordings. The tenant testified that he had also gone to get his mail from the other floor.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy for cause if the tenant or a person permitted on the property has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or
- Put the landlord's property at significant risk

As well, the same section allows the landlord to end the tenancy if the tenant or a person permitted on the property by the tenant has engaged in an illegal activity that has adversely affected or is likely to affect the quiet enjoyment, security, safety, or physical well-being of another occupant.

It is incumbent upon the landlord to provide sufficient evidence to show that the tenant has breached the act or tenancy agreement when issuing a 1 Month Notice to End Tenancy for Cause.

In the landlord's warning letter to the tenant dated December 22, 2007 there is insufficient detail as to how unreasonable or significant the interference and disturbances were.

In the "Final" warning letter of January 22, 2009 the landlord indicates that the tenant has broken the hotel rules about a requirement to register all guests and accompanying all guests inside the hotel.

I find that these rules are contrary to Section 30 of the Act, which states a landlord must not unreasonably restrict access to the residential property by a person permitted on the residential property by that tenant.

As a result, I find that warning letter is not a valid warning letter that could result in a Notice to End Tenancy as suggested in the letter. I further find that this incident cannot be relied upon as sufficient cause to end the tenancy.

The letter of June 25, 2009 does not appear to be a warning letter to the tenant, at all. In the letter the landlord is asking for the cooperation of the tenant as opposed to warning that the continued behaviour could result in the ending of the tenancy.

I am persuaded by the tenant's written submission that states that the landlord has failed to meet the threshold of severity as required by Section 47 of the Act.

In relation to the video evidence of the tenant being in the hall with a knife I note that the tenant was not acting in a menacing or threatening manner. I note that there was a third party who walked right by the tenant and seemed to have absolutely no reaction to the tenant holding the knife.

Despite the fact that the incident occurred the day before it was reported to the management of the residential property, the landlord did not file a police report. I find that if the landlord did not find it appropriate to contact the police they cannot now espouse that an illegal act took place.

Conclusion

As a result, I find the landlord has failed to show sufficient cause to end the tenancy, as such, I authorize the tenant to cancel the 1 Month Notice to End Tenancy for Cause, issued on October 30, 2009 and find that the tenancy remains 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 18, 2009.

Dispute Resolution Officer