



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated January 29, 2009. However, the Parties confirmed that the date of the Notice was in error and should have stated "December 29, 2009."

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started approximately 15 years ago. The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on December 29, 2009 which alleged the following grounds:

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.

The Landlord's agent claimed that another occupant in the rental property complained several times in the past month and a half that the Tenant was verbally abusive and threatening to him and that he feared for his safety. The Landlord's agent said the Tenant also posted notes in the rental property that made derogatory references to the other occupant. The Landlord's agent also claimed that the police were called to the rental property several times as a result of these incidents however he was unaware of specifics of any police investigation. The Landlord's agent said he also spoke to the Tenant about these complaints and advised him (verbally) that his behaviour was unacceptable and that if it continued the Tenant could be evicted.

The Landlord's agent claimed that the other occupant of the rental property said he would be moving out because he feared for his safety. The Landlord's agent also claimed that two other tenants had moved out due to similar behaviour by the Tenant. The Landlord's agent said that approximately a year ago the Tenant wrote a derogatory name on the door of another occupant of the rental property. The Landlord also

claimed that the Tenant has left abusive letters under other occupants' doors in response to their loud noise in the past year.

The Landlord's agent said that the Tenant has also left abusive telephone messages for him and that he feels harassed by the Tenant. The Landlord's agent played one of those messages that he said the Tenant left recently at 2:00 a.m. In that message, the Tenant was upset about not having heat for 5 days and states that the property manager is "f*cking useless." The Landlord said the Tenant also left him another message with respect to the lack of heat that said "my cat says to go f*ck yourself."

The Tenant claimed that the other occupant is a recovering drug addict who has on occasion walked around the rental property disturbing other occupants in a "cocaine induced psychosis." The Tenant admitted that he yelled at the other occupant and called him names but denied making threats. The Tenant said the police were called on 2 occasions and they questioned him about the alleged incidents but never filed any charges. The Tenant claimed that the other occupant threatened him and that the Tenant's roommate moved out because of the actions of the other occupant. The Tenant also claimed that the other occupant was planning on moving into a larger residence with his girlfriend.

The Tenant admitted that approximately a year ago he put a note under the door of other occupants because they were playing loud music until late in the day, every day and the Landlord would not deal with it. The Tenant argued that many the Landlord's allegations were based on hearsay of other occupants in the rental property. The Tenant did not deny that he left the messages for the Landlord's agent as he alleged but argued that he was upset about the "nuisance complaints" of the other occupant and not having heat and believed the building manager didn't care because he didn't live there.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord did not call any witnesses or present documentary evidence such as witness' statements to support his allegations or grounds on the Notice. The Tenant disputed the Landlord's allegation that he had significantly interfered with or unreasonably disturbed other occupants other than to respond to their alleged interference with his rights to quiet enjoyment. In the absence of any corroborating



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

evidence from the Landlord, I find that the Landlord has not provided sufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant.

The Landlord did, however, have first-hand knowledge about telephone messages he received from the Tenant which he claimed were abusive and the Tenant did not deny leaving those messages. While it is understandable that the Tenant would be upset in not having the heat restored after 5 days, it does not give him license to “unload” on the Landlord’s agent by yelling profanities and calling him abusive names (which I find he did).

However, unless the Tenant engages in conduct that is so severe that a single instance warrants eviction, fairness (and natural justice) requires that a person be given a warning (***preferably in writing***) that their conduct is unacceptable, that they are made aware that failure to cease the conduct will place their tenancy in jeopardy and that they are given a reasonable opportunity to correct their behavior. There is no evidence that the Tenant was given a warning that if he did not stop treating the Landlord’s agent abusively that his tenancy could be in jeopardy.

Consequently, I find that there is insufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause and it is cancelled. However, the Tenant now has written notice that any similar actions (such as verbal abuse directed at the Landlord’s building manager or other occupants of the rental property) may be considered as valid grounds for ending the tenancy in future.

Conclusion

The Tenant’s application is allowed. The One Month Notice to End Tenancy is cancelled and the tenancy will continue. 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: February 15, 2010.

Dispute Resolution Officer