

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for the following:

- a cancellation of the landlord's One Month Notice to End Tenancy for Cause pursuant to section 47; and
- recovery of the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing and had a full opportunity to be heard, to present evidence and to make submissions. The parties both agreed that the landlord gave the tenant the July 12, 2010 One Month Notice to End Tenancy for Cause and that the tenant gave the landlord his application for dispute resolution on July 13, 2010. I am satisfied that the parties have been duly served with the notice and the application for dispute resolution in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to the cancellation of the landlord's notice to end tenancy? Is the tenant entitled to recovery of his filing fee for this application?

Background and Evidence

The landlord testified that the tenancy commenced on January 1, 2009 by way of a month to month lease. Rent was established at \$900.00 per month payable on the first of each month. The landlord testified that he continued to hold the tenant's \$450.00 security deposit.

The landlord applied for a One Month Notice to End Tenancy for Cause because the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that he and his family live upstairs from the tenants. He said that the tenant has been consistently noisy in the evenings past 10:00 p.m. and has been riding his A.T.V. on and near the property. He said that the tenant makes a lot of noise, pounds on walls and disturbs the neighbourhood at different hours of the day and night.

The landlord testified that the tenant has threatened him a number of times and that he has had to call the police to assist with the tenant's abusive behaviour. He said that many of the tenant's abusive calls occurred after he provided him with the notice to end tenancy. The landlord said that he and his family feel threatened, especially when the tenant has been drinking alcohol.

He cited a number of examples where the police had been called to the property to deal with the tenant. He said that on two occasions the tenant's wife had told him that the tenant would not be returning to the premises. On each occasion, the tenant returned within a short period of time.

The tenant testified that the landlord did not voice concerns about these matters until July 2010. He denied making an undue amount of noise and said that neighbours have not been upset with him. He said that the landlord did ask him to discontinue cutting the lawn at 11:00 p.m. one night. He said that he finished cutting the lawn the following morning at 6:00 a.m. He did not deny that police have been called to his residence a

number of times, but described these as personal matters and not ones that required the termination of this tenancy.

The landlord noted that the tenant has not paid his rent for August and that he is seeking an Order of Possession to end this tenancy.

Analysis

Section 47 of the *Act* establishes the circumstances whereby a tenancy can be ended for cause. In this application, the landlord has applied for an end to the tenancy under section 47(1)(d)(i) of the *Act* which allows a landlord to end a tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The other reason cited in the landlord's application for an end to this tenancy is established under section 47(1)(e)(ii) of the *Act* which states that the tenant has engaged in illegal activity that "has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property."

Having issued a notice to end this tenancy the landlord has the burden of proving he has cause to end the tenancy.

Illegal activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the *Criminal Code*. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the Dispute Resolution Officer and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The landlord gave insufficient evidence of illegal activity at the rental premises. The fact that police have been called to attend to the tenant's property or that police files exist is insufficient to demonstrate that there is illegal activity occurring on the rental premises. I do not accept that the landlord has met the burden of proof with respect to this aspect of his notice to end tenancy for cause.

Significant Interference or Unreasonable Disturbance

Based on the evidence presented, I am satisfied that the landlord has demonstrated that the tenant has displayed a pattern of unreasonable disturbance of the landlord to warrant the landlord's one month notice of tenancy for cause. The landlord and the tenant provided evidence to confirm that the tenant's actions and behaviours have caused unreasonable disturbance to the landlord. The tenant's acknowledgement that he operated the lawn mower as late as 11:00 p.m. and as early as 6:00 a.m. confirms that the landlord's allegations of unreasonable disturbance are justified. The tenant did not question or deny the landlord's claims regarding threatening and abusive behaviour that the landlord alleges were directed at him by the tenant.

I find that the landlord was correct in issuing a Notice to End Tenancy for Cause because there is evidence that the tenant has significantly interfered with or unreasonably disturbed the landlord who lives upstairs on this property. I therefore dismiss the tenant's application to cancel the Notice to End Tenancy with the effect that this tenancy ended on the effective date set out on that Notice, July 11, 2010.

As the applicant's claim has been dismissed, he is not entitled to recover the filing fee he paid for this application.

At the hearing of this matter the landlord indicated that he is interested in obtaining an Order of Possession. Having dismissed the tenant's application to cancel the Notice to End Tenancy, I therefore issue the Order of Possession which will take effect within 7 days of being served to the tenant.

Conclusion

I dismiss the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause. I dismiss the tenant's application for recovery of his filing fee for this application. I grant the landlord an Order of Possession to take effect within 7 days of service to the tenant.

The landlord is provided with the Orders of Possession in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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*.