



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OPC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession. Both parties participated in the conference call hearing.

The tenant disconnected from the conference call hearing after 45 minutes. It seemed that the connection was terminated involuntarily as the tenant was mid-sentence at the time his phone disconnected. The landlord and I waited on the line for 10 minutes waiting for the tenant to join the hearing but he did not rejoin the call. At the time the call was disconnected, the tenant's advocate had just confirmed that she had responded in full to the landlord's allegations and had asked the tenant if he had anything further to say. The tenant was in the process of stating that the landlord had tried to evict him two times before having served the notice to end tenancy which is at issue. Although the landlord made further submissions while the tenant was not in the hearing, I was able to make a decision based on what I heard prior to the tenant having been disconnected and I closed the hearing without having heard further from the tenant as it appears that the tenant was able to fully respond to the allegations which were made against him. Further, the comments which the tenant was making at the time he was cut off had no relevance to the issue to be decided.

Issues to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenant received the notice to end tenancy on July 27, 2010. The notice alleges 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, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that since taking over the building on September 16, 2009, there have been at least 15 instances in which the tenant significantly disturbed other tenants. The landlord provided unsigned letters which they claim are from other occupants who did not wish to be identified as they were fearful of retribution from the tenant. The letters echo the verbal complaints the landlord claimed to have received and include complaints about noise late at night, loud arguments in common areas between the tenant and his guests, smoke from marijuana, use of foul and abusive language toward other occupants and the landlord and noise from high traffic in and out of the rental unit late at night. The resident manager testified that on July 5, the tenant and a number of his guests surrounded the manager, pushed him with their hands and feet and tried to provoke him. The manager's wife testified that she observed the incident. The landlord testified that the police were summoned on this occasion as well as for a number of other earlier problems.

The tenant argued that the letters submitted by the landlord should be given little or no weight as they are unsigned. The tenant denied any knowledge of police involvement at the residential property. The tenant acknowledged that he smokes and uses medical marijuana, but testified that the tenancy agreement does not prohibit smoking and claimed that he had a permit to use medical marijuana. The tenant claimed that due to his poor health, he is "in no condition to fight or party." The tenant denied having been at the residential property at all on July 5 and claimed he was staying with his girlfriend at that time. The tenant provided a telephone number for his girlfriend and an attempt

was made to invite her to participate in the hearing, but she did not answer her telephone.

Analysis

The landlord has the burden of proving the claim on the balance of probabilities. I prefer the evidence of the landlord to that of the tenant for a number of reasons. While the tenant objected to the authors of the letters not having been identified, he did not expressly deny the allegations in the letters. Rather than expressly denying the allegations which were made against him, the tenant stated that due to his medical issues he is in "no condition to fight or party." The tenant denied having been at the residential property on July 5 but was unable to produce a witness to corroborate his testimony while the manager, his wife and at the author of at least one letter claim to have seen the tenant. I am unwilling to give significant weight to the letters as the tenant was not advised of the authors and was thereby deprived of the opportunity to make full answer and defence. However, I find the testimony of the manager and his wife to be consistent and credible and while little weight can be afforded to the letter which confirms the incident, I note that it too is consistent. The tenant acknowledged smoking marijuana and while he may be legally entitled to do so, although he provided no evidence to show that this is the case, it appears that the odour is offensive to other tenants and to the landlord.

I find that the landlord has proven that it is more likely than not that the tenant has significantly interfered with and unreasonably disturbed other occupants and the landlord. Specifically, I find that the tenant and his guests were involved in an altercation with the manager on July 5 and that the tenant acted in a manner which was excessively aggressive and threatening. I further find that the tenant's use of marijuana has created a significant interference with the right of other occupants to experience quiet enjoyment of their rental units. Regardless of whether the tenant is legally entitled to use marijuana, its use cannot interfere with other occupants of the building. Further, the tenant presented no proof that he was permitted under the terms of the tenancy

agreement to use marijuana in the rental unit. I therefore decline to set aside the notice to end the tenancy and I dismiss the tenant's application.

Conclusion

I grant the landlord an order of possession. The tenant must be served with the order. If the tenant fails to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

Dated: September 23, 2010

Dispute Resolution Officer