



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 One Month Notice to End Tenancy for Cause.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Agents for the Landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issues(s) to be Decided

Is the Tenant entitled to an Order cancelling the One Month Notice to End Tenancy for Cause?

Background and Evidence

This tenancy started in May 2009, as a fixed term tenancy and continues now on a month to month basis. Monthly rent is \$3,500.00, payable on the 15th day of each month, and a security deposit in the amount of \$1,650.00 was paid on April 14, 2009.

Pursuant to the rules of procedure for the Act, the Agent for the Landlord proceeded first in the hearing and testified as to why the Tenant had been served a One Month Notice to End Tenancy

The Landlord issued a One Month Notice to End Tenancy for Cause to the Tenant on August 15, 2010, with a stated effective date of September 15, 2010. Under the Act, a notice under this Section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month

that rent is payable under the tenancy agreement. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to October 14, 2010. I further note that the Tenant filed his application for dispute resolution within the time in accordance with the Act.

The cause as stated by the Landlord indicated that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk.

The Landlord also claimed in the Notice that the Tenant engaged in illegal activity, but withdrew that assertion at the hearing, and this issue was not considered and the hearing proceeded for the alleged causes set out above.

The Agents for the Landlord supplied evidence and gave affirmed testimony that a cast iron planter fell from the Tenant's balcony, causing damage to a car on adjoining property and violating Strata bylaws. The Strata corporation issued a letter stating, among other things, that a fine of \$200.00 is being recommended, but not enforced at the present time.

While there are several inconsistencies in the letter from the Strata corporation offered in evidence, the Tenant gave affirmed testimony that he will pay any such fine and I will not further address this issue.

The Agent for the Landlord testified that the Tenant allowed two objects from his balcony to be ejected sometime in 2009, but the matter was addressed at the time and no further action was taken. I note that the Landlord did not issue a written warning for either incident.

The Agent for the Landlord gave testimony that the Landlord's main concern was for the safety of other people and occupants of the residential property.

The Tenant gave evidence and affirmed testimony that the planter was a gift, placed on the rail by a guest and that he was attempting to secure the planter when it fell. The Tenant gave affirmed testimony that this occurrence was an accident and that he immediately went to the site of the damaged car, talked to the owners involved and offered to pay for any damage to the vehicle.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The testimony and evidence given by the Landlord does not rise to the level necessary under the Act to end the tenancy.

I find that there are no frequent and ongoing acts by the Tenant, that the Landlord based the One Month Notice to End Tenancy on one incident, that the Landlord had insufficient evidence to prove the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health and safety or lawful right of another occupant or the landlord or that the Tenant put the Landlord's property at significant risk.

Therefore I find the One Month Notice to End Tenancy for Cause issued by the Landlord is not valid and not supported by the evidence and **I order that the Notice be cancelled.**

Conclusion

The Landlord's One Month Notice to end Tenancy is not valid and not supported by the evidence and the Tenant is granted an order dismissing the Notice to End Tenancy.

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: September 09, 2010.

Dispute Resolution Officer