



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 an Application for Dispute Resolution by the Tenant seeking an Order to cancel a 1 Month Notice to End Tenancy issued for Cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Tenant to the Landlord on September 22, 2010 at 13:00 hrs. The Landlord confirmed receipt of the hearing package.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenant confirmed he did not submit evidence in support of his application and the Landlord confirmed that he provided the original 1 Month Notice into evidence.

Issue(s) to be Decided

- 1) Is the Tenant entitled to an Order to Cancel the 1 Month Notice pursuant to section 47 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal tenancy agreement effective April 1, 2009. Rent is payable on the first of each month in the amount of \$560.00 (\$600.00 - \$40.00 deduction for hydro). A security deposit of \$300.00 was paid by the Tenant on March 31, 2009.

The Landlord's Witness testified that he lives in the rental unit across the hall from the Tenant and he has had to call the police on two occasions because of the noise level coming from the Tenant's unit. He said the Tenant gets drunk and angry and starts yelling the "f" word and slams doors at the early hours of the morning. He argued that he has made at least five verbal complaints to the Landlord. The Landlord asked him to put his complaints in writing however the Witness stated that he did not want to go to

that trouble. The Witness has lived in the rental building since May 1, 2010 and he said the noise has been a problem from the beginning.

The Landlord testified that he was tired of getting the complaints from the other tenant and he was tired of the Tenant paying his rent late all the time. The Landlord was not able to provide testimony of the exact dates the Tenant paid his rent late and confirmed that the Tenant used to pay his rent by cash and lately he is requesting to pay his rent by Visa. The Landlord stated that he thinks the Visa payments were made on August 10, 2010 and September 15, 2010 and he confirmed that he does not always give receipts for payments he receives in cash. He stated that after each complaint the Landlord goes to the Tenant's unit to speak to him but he is never there. So on September 15, 2010 the Landlord posted the 1 Month Notice to End Tenancy to the Tenant's door. When I first asked the Landlord if he ever provided written notices to the Tenant he stated that he thinks so and when I asked for the dates of the alleged notices the Landlord was not able to provide further testimony. The Landlord also alleged that there has been damage to his property around the flower pots but that he cannot prove the Tenant caused the damage. He stated that the Tenant is fine when he is not drunk.

The Tenant confirmed receiving a photocopy of the 1 Month Notice to End Tenancy posted to his door on September 18, 2010. He argued that his rent was late because the Landlord attempted to put \$650.00 on his Visa when he was only authorized to put \$560.00 on it. The Tenant was alerted to this error when the Landlord posted a 10 Day Notice for unpaid rent and attached a copy of the rejected Visa payment. Once the Tenant pointed the error out to the Landlord the payment went through okay. He confirmed that he does not always get a receipt for cash payments and he stated that he has never been issued a written warning for noise complaints.

When I asked the Tenant what he thought was going on he advised that approximately one year ago there was a major flood in the building and all the tenants were evicted, except for him. These other units have now been renovated and new tenants brought in. Then in July when the Tenant paid his rent in cash the Landlord asked him when he was moving out to which the Tenant replied that he was not moving.

In closing the Landlord confirmed the rental unit is one of four units that are located above a restaurant that the Landlord operates. He stated that if the Tenant wants to stay he has to pay his rent on time and not disturb the other tenants when he is drunk.

Analysis

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

Upon consideration of all the testimony presented to me, I find there is insufficient evidence to support the Landlord had valid reasons for issuing the Notice. Therefore the 1 Month Notice to End Tenancy is hereby cancelled.

The Tenant is hereby ordered to pay his rent on time, in accordance with section 26 (1) of the Act which states that a tenant is required to pay rent when it is due under the tenancy agreement.

The Landlord is hereby ordered to provide the Tenant with a receipt for all rent payments made in cash, in accordance with section 26 (2) of the Act.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued September 15, 2010, is hereby cancelled and is of no force or 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: October 27, 2010.

Dispute Resolution Officer