



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated September 27, 2010. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and that the tenant had engaged in illegal activity that jeopardized a lawful right or interest of another occupant or the landlord.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issue to be determined, based on the testimony and the evidence, is whether the criteria supporting a One-Month Notice to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), has been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown. The burden of proof is on the landlord.

Background and Evidence

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated September 27, 2010 showing an effective date of October 31, 2010. No evidence was submitted by the landlord.

The landlord and witnesses gave testimony that described 3 separate incidents in which the tenant had been verbally abusive by yelling at the landlord and the landlord's staff and using profanity, often in the presence of others including children. According to the landlord and one witness, on one occasion the tenant's conduct prompted the landlord to contact the police and a police report file was opened. The landlord testified that similar complaints were received from other tenants and trades people. The landlord

testified that other conduct that caused was the tenant's refusal to cooperate by permitting access into the unit when an emergency arose.

The tenant denied all allegations and pointed out that the landlord had never issued a written warning for the purported offensive conduct. The tenant described issues that bothered her about the tenancy and the landlord's response to problems that occurred.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment. This right applies to other residents in the complex as well as the tenant herself.

If the tenant had engaged in the conduct described, there is no doubt that this would constitute significant interference and unreasonable disturbance of other occupants or the landlord. However, the question of what occurred is not an easy determination to make with nothing more than the conflicting verbal testimony before me particularly as the burden of proof was on the landlord.

In particular, when the tenant's conduct became bothersome, the landlord had an obligation to issue a written warning to make sure that the tenant understood that her conduct may risk termination of the tenancy if it did not cease. Ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour.

Given the above, I find it necessary to cancel the One Month Notice. However, the tenant is cautioned that this decision will serve as a warning and the tenant is now aware that if the conduct is repeated, it could function as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act. In cancelling this Notice, I encourage the parties to communicate in written form in regards to tenancy-related concerns and to retain copies of all communications.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of September 27, 2010 be cancelled and of no force nor 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: November 2010.

Dispute Resolution Officer