

Decision

Dispute Codes:

CNC, MNDC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated November 8, 2010. The tenant was also seeking reimbursement for additional payments required by the landlord. 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 seriously jeopardized the health safety or lawful right of another occupant or the landlord.

Issue(s) to be Decided

The issue to be determined, based on the testimony and the evidence, is whether the a One-Month Notice to End Tenancy is warranted 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 November 8, 2010 showing an effective date of December 7, 2010. No evidence was submitted by the landlord.

The landlord gave testimony that described an incident in which the tenant's son had yelled out the window at two children climbing trees in the neighbouring resident's back yard, telling them to get out of the trees and warning them that they could be causing branches to break. The landlord testified that this was the latest incident in a history of disruptive conduct by the tenants and that this action had allegedly caused emotional upset for the children. The landlord had submitted a copy of a previous dispute resolution hearing in which monetary compensation was awarded to be paid by the

landlord to the adjacent resident to compensate for loss of quiet enjoyment. The monetary award against the landlord was based on the fact that this landlord failed to act to ensure that the neighbouring renter was not subjected to unreasonable disturbance and significant interference by this tenant. The landlord was ordered to reduce the neighbour's rent until the tenant's adult son vacated their unit. The landlord testified that, after the previous hearing, the landlord and tenant also made an agreement in which the tenant committed to refrain from bothering the neighbor and agreed not to have any communication or contact with the adjacent renter. The landlord's position was that this latest incident violated the terms agreed-upon and, given the history, this would suffice as cause to end the tenancy.

The tenant testified that they fully complied with the landlord's requirement that their son, who was living with them at the time, move out. The tenant stated that the parties had also devised a payment plan in which the tenant agreed to reimburse the landlord each month for a portion of the lost rent stemming from the previous hearing. The tenant had paid a total of \$736.44 towards the landlord's loss but felt that this was unfair and should not continue. The tenant was seeking the return of these funds.

The landlord confirmed that the monetary award granted against the landlord in the previous hearing awarded in favour of the adjacent tenant for loss of quiet enjoyment was being collected from the applicant tenant. The landlord acknowledged that these additional charges were imposed on the applicant tenant without obtaining a monetary order to do so under the Act.

The tenant testified that while they did agree to keep the peace and avoid conflict with the neighbor, the incident in which their son had yelled out the window to warn the children not to climb the trees would not constitute significant interference nor unreasonable disturbance. The tenant stated that the children were climbing trees within the boundary of the tenant's yard and their son had only cautioned them not to climb the trees. The tenant pointed out that no foul language, threats nor gestures were ever used. The tenant's position was that the landlord's One Month Notice to End Tenancy for Cause had no merit and should be cancelled.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment and this right applies to all residents in the complex. I find that the conduct described, while it may have been inappropriate given the history of the tenancy and the sensitivity of the current situation, would not be sufficiently significant nor unreasonable to warrant ending the tenancy for cause. Accordingly, I find that the One-Month Notice must be cancelled.

In addition to the above, I find that the landlord must return or credit the applicant tenant for any funds charged to the tenant in excess of rent owed. The estimate paid to date was \$736.44. The tenant is also entitled to recoup the \$50.00 cost of filing this application from the next rent owed.

The tenant is cautioned that this decision will serve as a warning and the tenant is now aware that if any significant interference or unreasonable disturbance is inflicted on their neighbouring resident, this could be considered 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 tenants to direct any future concerns or comments regarding anything to do with their neighbouring occupants, to the landlord rather than engaging in direct verbal exchanges with them..

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of November 8, 2010 be cancelled and of no force nor effect. I further order that the tenant is entitled to a one-time lump-sum rent abatement of \$786.44 comprised of the \$738.44 already collected by the landlord without obtaining an order to do so and the \$50.00 cost of this application.

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: December 2010.

Dispute Resolution Officer