

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a 1 month notice to end tenancy for cause. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started May 2009. On January 7, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause: seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord's agent testified that the tenant was seen having an altercation with another tenant and observed striking the other tenant. The on-site staff that witnessed this incident separated the two tenants and managed to get both calmed down. The landlord's agent is in possession of witness statements regarding this incident however these statements have not been submitted into evidence and the staff who witnessed the incident not available at this hearing to give testimony.

The tenant JB testified that he did get into an altercation with tenant A on December 30, 2010 but maintains that he did not strike him. The tenant JB stated that tenant A was kicking the walls in the hall way and yelling and screaming and that JB went into the hallway to tell him to stop. The tenant A grabbed JB by the hair as he turned to go back to his unit and that is when the two tenants got into a scuffle. The tenant JB stated that he is much bigger than tenant A and if he had punched him it would have been very obvious.

The tenant JB has submitted eight witness statements that clearly specify that he did not strike tenant A and that tenant A was in fact the instigator of the altercation and attacked JB as he was turning and walking away.

Analysis

Based on the documentary evidence and testimony before me, I am not satisfied that the landlord has proved its case. I accept that the tenant behaved badly on the date in question and that the situation escalated un-necessarily, but I am not satisfied that the actions of the tenant on December 30, 2010 justify bringing the tenancy to an end. I note that this is a two tenancy and it appears from the landlord's agents testimony that the events of December 30, 2010 were isolated and not an on-going pattern of behaviour for this tenant. Clearly, if such behaviours were to occur again in the future and another Notice to End Tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause. Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated January 7, 2011 with the result that the tenancy continues uninterrupted.

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: January 26, 2011

Residential Tenancy Branch