

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 December 30, 2010.

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 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 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 to justify that the Notice was warranted.

Background and Evidence

The tenancy began August 2010 with rent of \$1,000.00 and a security deposit of \$500.00 was paid. The tenant lives in the basement unit with the landlord residing above. There is a lockable door from the landlord's unit opening to a stairway to the common area in the basement and the tenant has a separate door to the rental unit. Utilities and use of the landlord's laundry facilities was included as terms of the tenancy.

Evidence submitted included a copy of the One-Month Notice to End Tenancy for Cause showing an effective date of January 31, 2011, copies of communications between the parties, a copy of the tenancy agreement, written testimony, a copy of an article about condensation and copies of witness statements from former tenants of the landlord.

The landlord testified that the tenant has significantly interfered with or unreasonably disturbed the landlord by sending written requests demanding that she not talk loudly on the telephone and that she wear soft-soled slippers. A copy of the tenant's note listing concerns and suggestions was in evidence. The landlord presented this as an example of the tenant's bullying.

The landlord testified that the tenant had also accused her of skulking around the premises at night looking in his windows, which had never occurred. In addition, the tenant had sent notes with derogatory comments about the landlord, copies of which were in evidence, and on numerous occasions yelled at the landlord calling her disrespectful names.

The landlord testified that there were quarrels over the tenant's access to the laundry room and his manner of using the landlord's laundry. The landlord also testified that the tenant had placed cards under the landlord's door at the top of the basement stairs to monitor whether the landlord's door had been opened and has vocally rebuked the landlord for allegedly entering the tenant's suite. The landlord stated that no illegal entry had occurred and pointed out that the landlord is fully entitled to use the portion of the basement not located within the tenant's suite.

In regard to the allegation that the tenant had seriously jeopardized the health, safety or lawful right of another occupant or the landlord, the landlord testified that the tenant has repeatedly created harmful condensation on the windows by refusing to open the window or use the fan. The landlord claimed that she was able to monitor the tenant's use of the bathroom fan from her unit and is aware that he neglects to turn it on. The landlord stated that this conduct is in contravention of the tenancy agreement addendum and will result in damage to the infrastructure of the building. The landlord said that she had issued repeated written warnings demanding that the tenant ensure the windows are opened and fan is used, without result. The landlord also testified that the tenant installed his own washing machine in the suite without the landlord's permission. The landlord stated that the rental unit is not adequately set up for this appliance as there is no floor drain and its presence risks the insurability of her home.

The landlord feels that the above is sufficient cause to justify the One-Month Notice and intends that the tenancy be ended.

The tenant stated that he did send a detailed note with his concerns about various things including a request that the landlord refrain from talking loudly on the telephone and walking heavily. The tenant confirmed that this was the note was in evidence. The tenant disputed the landlord's claim that she did not peer in his windows and did not enter his suite. The tenant acknowledged that he had made derogatory comments about the landlord, and through frustration had yelled at the landlord because of her

persistent harassment and interference. The tenant testified that the landlord kept adding restrictions on his use of the laundry and denied reasonable access to the machines so he resorted to bringing in his own washing machine, which the tenant felt did not pose any risk to the property. The tenant objected to the landlord's habit of opening her door at the top of the stairs to holler down at the tenant at will. The tenant acknowledged that the condensation on the window occasionally occurred, but denied that this was due to any neglect on his part. The tenant stated that he always used the fan and frequently opened the windows. The tenant pointed out that the weather conditions and structure of the building were likely responsible for the fogged windows.

The tenant denied violating an addendum of the tenancy agreement, a copy of which was in evidence. The tenant stated that the tenancy agreement specifically indicated on the final page that there was no addendum and he never signed the addendum document purported by the landlord to have been attached to the tenancy agreement. The tenant feels that the landlord's persistent monitoring of his activities in the suite and her practice of looking in the windows is an intrusion. The tenant believes that the One Month Notice to End Tenancy for Cause has no valid basis.

Analysis

In regard to the question of whether the tenant had significantly interfered with or unreasonably disturbed the landlord, I accept the evidence that was not disputed by the tenant that the tenant had approached the landlord with a list of demands including that the landlord refrain from talking loudly on the telephone and wear soft-soled slippers. While I find that some of the tenant's requests in this list may be unreasonable, I do not find the tenant's actions in sending such a communication to be significant interference nor unreasonable disturbance.

In regard to the tone of the tenant's various notes to the landlord, I find that there was a lack of respect and evident frustration on the part of the tenant. However, there was no overt threat issued towards the landlord in any of the written communication. In regard to the verbal exchanges between these parties, I accept the landlord's testimony that the tenant did raise his voice and did use objectionable terminology in addressing her.

However, I note that the tenant also felt that the landlord was being confrontational in her manner of communicating too, particularly her practice of monitoring the tenant's activities and repeatedly accusing the tenant of failing to use the fan, despite his protests that this was being done. I find that the nature of this conduct may have been genuinely perceived as interference or even harassment by the tenant.

Given the testimony and evidence, I find that the One-Month Notice to End Tenancy for Cause dated December 30, 2010 must be cancelled as the tenant's conduct alone did not meet the threshold to be considered as significant interference nor unreasonable disturbance.

I also find that this tenancy now will no longer include access to laundry. This will minimize the conflict and frequency of contact between these parties. I find that the tenant is also required to remove his washing machine from the suite. In compensation for the loss of the laundry facilities which was part of the tenancy, I order that the tenant's rent be reduced by \$80.00 per month.

The parties are instructed to communicate in written form and both have committed to using respectful language.

In addition to the above, the landlord is required to comply with section 29 of the Act as excerpted below:

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;.....

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy for Cause dated December 30, 2010 is cancelled and of no force nor effect.

I further order that the monthly rental rate for this unit is now \$920.00 and does not include laundry facilities. The tenant is ordered to remove the washing machine from his suite.

The landlord is ordered to comply with the Act by not entering the tenant's unit unless 24 hours written notice is given pursuant to section 29 of the Act.

The tenant is entitled to be reimbursed the \$50.00 cost of this application and the next rent owed to the landlord will be reduced by this amount.

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 21, 2011.

Residential Tenancy Branch