



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 January 12, 2011 and purporting to be effective February 12, 2011. 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.

Preliminary Issue

At the outset of the hearing the landlord testified that the Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant using email. Section 88 of the Act states that all documents, other than Notices of Hearing or Review Decisions, [those referred to in section 89, *special rules for certain documents*], required to be served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Service by email is not a method permitted under the Act and the Rules of Procedure. However, while I find that the Notice was not served in accordance with the Act, I find that the tenant had accepted service being that the tenant has made application to dispute the Notice.

Issue(s) to be Decided

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

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence

The furnished rental unit is occupied by two tenants each having a separate tenancy agreement with the landlord. Evidently the applicant tenant has his own bedroom and bathroom but shares the common areas such as the kitchen and living room with the other occupant as a tenant-in-common.

A copy of the One-Month Notice to End Tenancy for Cause and copies of email communications between the tenant and the landlord were also submitted into evidence by the tenant. No evidence was submitted by the landlord.

The landlord testified that the tenant had significantly interfered with or unreasonably disturbed the other occupant, by engaging in a conflict of lifestyles. The landlord stated that the tenants-in-common were not getting along and he was receiving complaints. To illustrate the nature of the conflict, the landlord testified that the other occupant is on a 12-hour work shift and also has an intensive study regime that requires quiet solitude in the common areas where the television is also located. The applicant tenant, on the other hand is enrolled in a study program and is at home much of the time. According to the landlord, when asked to leave the common area by the other occupant to allow her to study without distractions, the tenant has not been sufficiently cooperative. The landlord testified that some of the conduct perpetrated by the tenant clashes with the expectations of the other renter.

The tenant testified that he has accommodated the other renter, and has even been asked to leave the rental unit altogether on occasion. The tenant testified that, because the other renter is related to the landlord, she feels that she has the right to order the tenant out of the common areas at will. The tenant testified that these areas, for which he pays rent, are included as part of his tenancy and the tenant feels it is unfair for him to be forced to leave his home or the common areas because the other occupant wants the area all to herself.

Analysis

Under the Act, the activities of a tenant must not significantly interfere with nor unreasonably disturb other occupants. I note that the perception of what is or is not “unreasonable” or “significant” is influenced by the sensitivity or subjectivity of the individual. I also note that the landlord had not directly witnessed the alleged interference or disturbance himself, but was fulfilling his responsibility to receive and act upon complaints made by one renter about alleged violations of their tenancy rights by another.

However, even if I accept that the tenant refused to leave the common areas when asked by the other occupant, this refusal to leave would not qualify as significantly interfering with nor unreasonably disturbing another occupant. The mere presence of the tenant or conduct comprised of normal living activities such as cooking or watching television, would not be sufficient to support a Notice for Cause because, there is no violation of the Act involved in such activities.

In addition, if one resident has attempted to restrict access to the common areas by another tenant, he or she would be in serious violation of the Act. In such situations the landlord would be required to intervene to protect the impeded tenant’s right to access pursuant to section 27 and 30 of the Act and the tenant’s right to quiet enjoyment under section 28 of the Act.

In light of the fact that the landlord has failed to sufficiently prove that any of the criteria listed under section 47 has been satisfied, I find that I must cancel the One Month Notice to End Tenancy for Cause.

The tenant testified that he is now in the process of looking for another suitable rental unit within his budget where he can relocate. The tenant testified that, even if he does not find other accommodation in the near future, he will definitely be vacating at the end of April 2011 at which time he begins the work placement portion of his training program. The landlord stated that, should the tenant succeed in obtaining a new suite in the near future, he is at liberty to vacate without providing the required one-month notice that would otherwise be required under the Act.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy dated January 12, 2011 is cancelled and of no force nor effect. The tenant is entitled to be compensated for the cost of the application in the amount of \$50.00 and may deduct this amount off of the next rent owed to the landlord.

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: February 2011.

Residential Tenancy Branch