



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated January 17, 2011.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on May 7, 2010. On January 17, 2011, the Landlord's agent served the Tenant in person with a One Month Notice to End Tenancy for Cause dated January 17, 2011. The grounds set out on the Notice were as follows:

- The Tenant or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- The Tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord;
 - Jeopardized a lawful right or interest of another occupant or the Landlord.

The Landlord's agent said the Tenant was given a written warning on August 30, 2010 about an ongoing conflict he was having with another (neighbouring) occupant of the rental property. The Tenant admitted his involvement in this conflict but said the problem arose when his then neighbour acted threateningly toward his children when

they were outside playing. The Tenant said this conflict was resolved when the Landlord moved him to another floor in the rental property.

The Landlord's agent said the Tenant was given a final written warning on December 30, 2010 when he got into a physical altercation with another occupant of the rental property. The Tenant also admitted his involvement in this incident. The Tenant said the other occupant said something objectionable to him and this started a verbal altercation which then led to pushing and shoving. The Tenant said he reported this incident to the Landlord and he also resolved the matter with the other occupant a few days later.

The Landlord's agent said he received a written complaint from a 3rd occupant of the rental property on January 16, 2011 alleging that the Tenant was harassing and threatening him. The Tenant denied these accusations and said instead that it was the other occupant (his neighbour) and his friend who approached his residence on January 14, 2011 and threatened that they would get him kicked out. The Tenant provided a corroborating written statement from a person who he claimed was present in the rental unit at the time. The Tenant also provided a corroborating written statement from another neighbour. The Tenant said he contacted the Landlord's agent immediately after this incident to inform him of it.

Analysis

The Landlord's agent admitted that there is no evidence that the Tenant has engaged in an illegal activity and therefore I find that there is no basis for including those 2 grounds on the One Month Notice to End Tenancy.

I find that the Landlord's agent gave the Tenant a final written warning on December 30, 2010 that "all further disruptions of any kind will warrant an immediate Notice to Vacate." Consequently, the Landlord's agent said that when he received the written complaint from the Tenant's neighbour on January 17, 2011, he gave the Tenant a Notice to End Tenancy. The Landlord's agent admitted that he did not investigate this incident to determine if there was any merit to the complaint.

The Tenant admitted that he "might have been in the wrong" with respect to the incidences in 2010, but denied that he did anything wrong that would warrant the 3rd complaint. The Tenant relied on witness statements to support his version of the events that took place on January 14, 2011.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. Given the contradictory evidence of the Tenant and in the absence of any corroborating evidence from the Landlord, I find that the Landlord has not provided

sufficient evidence to show that grounds exist to end the tenancy and as a result, the One Month Notice to End Tenancy for Cause dated January 17, 2011 is cancelled and the tenancy will continue.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated January 17, 2011 is cancelled and the tenancy will continue. 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 07, 2011.

Residential Tenancy Branch