



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof to end the tenancy for cause?

Background and Evidence

I heard undisputed testimony that the Tenant has resided in this rental building for approximately five years. The Landlord was not able to provide testimony of when the Tenant moved into this rental unit however she did confirm that she had moved him to the upper floor to give him a fresh start. The Tenant stated he has been in the unit since approximately September 1, 2010.

The Landlord testified the rental building contains several single room occupancy units with kitchenettes in the rooms and the tenants share a common washroom. She stated that she received a complaint from a visitor to the building that he saw needles being thrown out of the Tenant's unit on the second floor. Then she saw a bag with a sandwich thrown out of the Tenant's window. She said she took the bag to the Tenant and told him she saw this thrown out his window and he did not deny it. She also began to get complaints about the amount of noise coming from the Tenant's unit. With each

complaint she said she spoke with the Tenant and told him to keep the noise down. Then when the Landlord conducted a room inspection she found her grandfather's blanket on the Tenant's bed. She said the other tenants are now concerned for their safety as the Tenant appears to be engaged in drug use again and was found standing outside of his unit with no clothes on. Again, the Landlord stated she gave the Tenant verbal warnings about his behaviour.

The Tenant testified he has been in that building for four or five years now and his new unit was very cold so when he saw the blanket in the empty room at the end of the hall he borrowed it so he could stay warm. He said that after the inspection he came home one day and his blanket was gone so he suspects the Landlord entered his room while he was gone.

The Tenant advised the person who has written the complaints about him owes him money. The Tenant leaves the unit by 6:00 a.m. to go to work and does not return most days until after 6:00 p.m. so he questioned how he could be making noise all day long. He does not have a television or a stereo so he was not sure what they were talking about. He states he has never thrown stuff out of his window and certainly not needles.

The Tenant stated the Landlord never spoke to him about issues and never warned him verbally or in writing about being evicted. He said that the notice to end tenancy was served to him two days after the Landlord saw he had the blanket.

The Legal Advocate stated that there have been no prior complaints since the Tenant occupied this unit in September 2010. She noted that the written complaint issued against the Tenant was dated two days after the notice to end tenancy was issued. She stated there is not enough evidence to support the Landlord's claims as they are all hearsay and circumstantial. There have been no written warnings issued to the Tenant therefore there has been no opportunity for the Tenant to address the issues prior to being evicted and therefore she feels the Landlord has not met the burden of proof.

The Landlord confirmed her blanket was stored in an empty room at the end of the hall; however there is a sign posted that clearly states do not enter except in case of an emergency. She states she knows firsthand that the Tenant is not a quiet tenant as she used to live on the same floor as him.

Analysis

In this instance, the burden of proof is on the Landlord to prove the Tenant 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, and the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being, and jeopardized a lawful right or interest of another occupant or the landlord.

Section 47 (1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has not corrected a situation within a reasonable time after written notice to do so has been issued. A Tenant must not only be made aware of an alleged breach, they must also be advised what action will be taken if the behaviour or breach continues.

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

There is no evidence before me to support the Tenant was issued written warnings or that he has been made aware, in writing, that if his actions continue it could lead to ending his tenancy. Rather the evidence supports the Tenant was only given verbal warnings and never informed these issues would lead to an end of his tenancy. Therefore I find the Landlord has provided insufficient evidence to meet the burden of proof and I hereby cancel the 1 Month Notice to End Tenancy.

Conclusion

I Hereby Order that the 1 Month Notice to End Tenancy, issued on March 9, 2011, is cancelled, and is of no force or effect.

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: April 04, 2011.

Residential Tenancy Branch