



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's application to cancel a Notice to End Tenancy for Causes.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

The parties each acknowledged receipt of the evidence of the other and an opportunity to consider the other's evidence.

Issue(s) to be Decided

Is there a basis to cancel the Notice to End Tenancy for Cause?

Background and Evidence

This one year, fixed term tenancy began April 2, 2011, monthly rent is \$1,200.00 and the Tenant paid a security deposit of \$600.00 at the beginning of the tenancy.

The evidence indicates that the Landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") on May 2, 2011. The cause listed on the Notice alleged that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the Landlord proceeded first in the hearing to explain why the Notice had been issued.

The Landlord's Agent stated that the rental unit is one of 96 rental units in a building with over 200 tenants.

The Landlord's Agent testified that problems began almost immediately after the Tenant moved in, such as the Tenant bringing in a number of visitors, who swore and

intimidated other tenants, that the Tenant and her guests rifled through the building's garbage looking for bottles and other items and dragged the garbage bags onto the elevator, making a "mess" in the elevators. The Landlord's Agent submitted that the Tenant was very aggressive towards other Tenants, leading some not to get on the elevator when she is present.

The Landlord's Agent testified that other tenants have witnessed the Tenant's behaviour of going through the garbage, but there were no written complaints.

As a result of the above, the Landlord's Agent issued a Breach Letter to the Tenant, on April 28, 2011.

The Landlord's Agent testified that on another occasion, a fellow tenant reported his bike stolen, which ultimately was seen by the Landlord's Agent, who called the police. As a result of the police attending and the tenant supplying a serial number, the bike was recovered at the Tenant's rental unit. The tenant has also reported a second bike missing, which the Landlord's Agent believed was taken by the Tenant.

The Landlord's Agent testified that over the weekend before the dispute resolution hearing, the Tenant was seen by the caretaker taking parts from other bikes in the gated bike room.

The Landlord, upon query, stated that some tenants leave their bikes in a locked, gated room in the basement and that a tenant would be given a key if requested.

The Landlord stated that when she witnesses an incident caused by the Tenant, she writes the details in a log book.

The Landlord supplied into evidence two separate written incidents recorded in the log book regarding the Tenant's behaviour, dated on April 23/24 and on May 3, the Breach Letter, a written statement from the Tenant with the missing bikes, the Notice and the tenancy agreement.

The Tenant responded by saying that she did have possession of the bike in question, but that she paid \$10.00 for it from someone on another street. The Tenant acknowledged that the bike could be stolen, but did not realize it belonged to the tenant in question and that she gave the bike to the police when they informed her it matched the other tenant's serial number.

The Tenant denied having multiple guests over and stated that she has had just one person over ever, her boyfriend. The Tenant denied cursing and intimidating the other tenants and denied leaving a mess with the garbage.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Once the Tenant made an Application to dispute the Notice, the Landlord became responsible to prove the Notice to End Tenancy is valid.

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.

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I was persuaded by the lack of written and documentary evidence. The Landlord issued a Breach Letter, dated April 28, 2011, which referenced the Tenant and her guests going through the garbage and recycling. However, the Landlord's Agent had no further notation of these activities in her log book, in which she testified she recorded all such occurrences on the premises and most importantly, none since the issuance of the Notice on May 2.

The other instance recorded in the log book regarding the stolen bike, was dated May 3, 2011, which is a day after the Notice was issued.

The Tenant submitted that she did not steal the bike from the other tenant and was cooperative with the police; however no police report was issued or entered into evidence. I further considered that the Landlord's Agent testified that the bike room was gated and locked and I find that the Landlord's Agent did not substantiate or even state that the Tenant had a key, broke the lock, or took the bike.

The balance of the Landlord's evidence was disputed verbal testimony as the Landlord failed to produce any witnesses or written statement from other tenants, who the Landlord stated keep coming to her with complaints.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of “facts” is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

I therefore find that the Landlord has submitted insufficient proof to establish the cause listed on the Notice.

Conclusion

As a result, I find the Landlord’s 1 Month Notice to End Tenancy for Cause is not valid and not supported by the evidence, and therefore have no force and effect. I **order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

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: June 07, 2011.

Residential Tenancy Branch