



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, to have the Landlord comply with the Act and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on June 7, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act?

Background and Evidence

This tenancy started on February 15, 2009 as a month to month tenancy. Rent is \$529.00 per month payable in advance of the 1st day of each month. The Tenant paid a security of \$500.00 prior to February 15, 2009.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated June 6, 2011. He served the Notice on June 7, 2011 by personal delivery to the Tenant. The Tenant said she received the Notice in her door. The Effective Vacancy date on the Notice was July 31, 2011. The Tenant is living in the unit and the Landlord said they want to end the tenancy.

The Landlord continued to say the Tenant had an altercation with one of the other tenants in the rental complex and there was a verbal dispute and the Tenant’s guest threatened one of the other tenants with physical violence. The Landlord said they did

not contact the Tenant about the incident, but the Landlord issued a Notice to end tenancy for cause on June 7, 2011. The Landlord said he issued the Notice to End Tenancy because of a no violence or crime free addendum that is part of the all tenancy agreement in the rental complex now. The Landlord said that this Tenant's tenancy agreement does not have the crime free addendum in it. The Landlord called 3 witnesses. The first witness G.M. testified that he was in his rental unit when a large man came to the door and started shouting about the verbal argument his partner and the large mans former partner were having about the children in the rental complex. The Witness G.M. said he was scared of the large man, but there was no physical violence. The Witness G. M. told his partner to phone the police. The Tenant called a Witness H.A. who is the large man previously referred to. Witness H.A. said he did talk to the other tenant G.M. about their children, but he said he did not threaten G.M. in any way. The Witness H.A. said the police did come to his former partners rental unit, but no charges were laid and he said the police said there was nothing to be done. The Witness H.A. said he attended a bar-b-que at the rental complex a few days later and he said relations between G.M. and him appeared to be normal. The Landlord said they were not involved in the incident and have not followed up on the incident except to issue the Notice to End Tenancy for Cause.

The Landlord called their second Witness R.U. who is the partner of Witness G.M. The Witness R.U. said she had a verbal dispute with the Tenant about their children and she said the Witness H.A came to their door and threatened G.M., but there was no physical violence. She confirmed that she phoned the police. The Tenant called her next witness D. B. who said she confirmed seeing the Tenant and R.U. having an argument about their children. Witness D.B. said she did not see any physical violence.

The Tenant said that she was following the tenant's handbook given to her by the Landlord to resolve the dispute. The Tenant said the handbook says on page 4, tenants are to try to resolve dispute between themselves if possible. The Tenant said she went over to the R.U. 's rental unit to try to resolve the dispute, but it resulted in the Landlord issuing a Notice to End Tenancy.

The Landlord said they did not interview the Tenant about the incident. The Landlord said they issued the notice based on the information of the tenants G.M. and R.U. who live in one of the other rental unit. The Tenant said she phoned the Landlord and the Landlord said he did not want to talk about it because he wanted to go to dispute resolution though the Residential Tenancy Branch.

Both sides submitted letters of support from other tenants in the rental complex.

Neither side submitted corroborating evidence that a threat of physical violence was made and both sides agreed there was no act of physical violence.

Analysis

It appears from the testimony at the hearing that communications between the Landlords and the Tenants have broken down. There was contradictory testimony provided by the Tenants the Landlords and the Witnesses regarding the facts of the situation. It is apparent the Landlords have not up dated the Tenant's tenancy agreement to include the addendum about crime free living nor has the Landlord given the Tenant written warning letters about disputes with other tenants. Instead the Landlord issued a Notice to End Tenancy for Cause; this notice included disturbing other tenants and affecting the health and safety of other tenants. As well, the Landlord did not submit evidence or testimony that corroborated their testimony. The Witnesses' testimony was as contradictory as the Landlord and Tenant's testimony and is basically one witness's word against the word of the other witness; as a result this is a situation of the applicant's word against the respondent's word. The burden of proving that a Notice to End Tenancy has just cause lies with the Landlord and when it is just the Landlord's word against that of the Tenant that burden of proof is not met. Consequently I find the Landlord has not established grounds to prove the Notice is valid and the Tenant is granted an Order to cancel the Notice to End Tenancy.

As the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$50.00 from the Landlord. The Tenant may deducting \$50.00 from the July, 2011 rent payment or collect the \$50.00 filing fee directly from the Landlord.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated June 3, 2011 is cancelled and the tenancy is ordered to continue as indicated in the tenancy agreement.

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*.

Dispute Resolution Officer