



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel a Notice to End Tenancy given for Cause.

Both parties attended the hearing and gave evidence under oath.

Issues(s) to be Decided

Does the landlord have cause to end this tenancy?

Background and Evidence

The landlord testified that the tenant has been frequently late with his rental payments. The landlord agrees that the receipts say they rent was paid on the 1st of each of the months in question however one cheque was returned due to non-sufficient funds. Further the landlord would give receipts indicating payments were made on the 1st however the tenant would then provide a cheque that was post-dated. Because the landlord was intimidated by the tenant the landlord did not ask for the receipts to be returned. In total the tenant's rent was late for January and February. The landlord submits that he didn't keep track of other late rental payments but says there were many since this tenancy began in 2007.

The landlord says the tenant threatens him. The landlord says the tenant demands notice to enter the rental property although the landlord has an Order from the Residential Tenancy Branch saying he is allowed to enter the property at any time to work the orchards. The landlord did not produce a copy of that Order. The landlord says the tenant's son threatened him and none of the landlord's family members wants to go onto the rental property. The landlord says the tenant owns a dog who barks at them when they come onto the property.

Further the landlord claims that the tenant has sublet the rental unit without his permission.

Although the landlord also indicated in the notice that the tenant is engaging in an illegal activity the landlord testified that he did not know of any illegal activity.

The tenant says his rent was paid on the 1st of the month at all times except in February when one of the tenant's cheques was returned NSF however the rent has now been paid.

The tenant says his dog is very tame and while it barks when someone comes onto the property it has never bit anyone, there are sheep in the area and the dog does not bother the sheep. The dog is leashed at all times when it is outside without the tenant.

The tenant says he did not sublet the rental unit. There was a tenant in the basement with the permission of the landlord however that person moved out about a year ago.

Analysis

The onus or burden of proof is on the party making the claim. When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has failed in his burden of proving he has cause to end this tenancy.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy is cancelled. The effect of this decision is that this tenancy shall continue beyond the effective date set out on the Notice to End Tenancy issued in this matter.
