



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, OLC, LRE, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a Notice to End Tenancy; for more time to make an application; for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to have the landlord comply with the Act and suspend or set conditions on the landlord's right to enter the rental unit; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset the tenant's agent withdrew the tenant's monetary claim against the landlord. Therefore this portion of the application is dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to cancellation of a Notice to End Tenancy?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment. Pursuant to a written agreement, the tenancy started in April 2000. The landlord testified of an ongoing feud between the tenant and K.V., another tenant in the complex. He stated that he started to receive verbal complaints from other tenants in the fall of 2010, and that following a confrontation with K.V., the landlord told the tenant that he will have to learn to co-exist peacefully. He stated that the tenant has complained to him that other people were knocking at his door day and night; that he received a written complaint from K.V. in December 2010; that he told the tenant not to engage K.V.; that two more complaints from other tenants caused him to warn the tenant in writing on January 13th, 2011; that the tenant called the police and complained about noxious odours from other units; that the building was inspected, that the fire department attended and that the complaint of noxious odours was unfounded. The landlord also stated that there were no problems after the January 13th warning letter until April 21st, 2011, when K.V. complained that the tenant called the police on him and accused him of being the source of the noxious odours. As a result of this latest complaint, the landlord seeks to enforce the 1 Month Notice to End Tenancy.

In his documentary evidence, the landlord provided a written complaint from a neighbouring tenant, over an incident on January 11th, 2011 where the tenant was thumping on the floor. The landlord also provided a copy of a report from the Fire Marshall dated May 5th, 2011, stating that the tenant was served a Notice of Violation, and directing the tenant to substantially reduce the number of stored combustibles in his unit.

The tenant testified that V.K. is the source of the problem; he stated that at some point V.K. threatened to kill him, and that the landlord ignored dealing with reports that V.K. has been banging in the stairwell and on his door.

He said that the fumes started when a new tenant moved in below him, which caused him to go to the hospital, to report respiratory problems, and to get a puffer. He said that when he spoke to the landlord in January about doing something about V.K.'s behaviour, the landlord told him that he would have to learn to co-exist peacefully.

Concerning the complaints about January 11th, 2011, the tenant stated that this was when he had a problem with the noxious odours and that he was losing his balance.

The tenant's advocate questioned the landlord about V.K.'s behaviour to put the tenant's complaint into the right context, specifically; that the tenant is the one who complained about V.K. She also pointed to the time frames of the complaints to show that there are not other complaints with the exception of an isolated incident on January 11th, 2011. The tenant also stated that the problem with the noxious odours has apparently been resolved, and that he has complied with a Fire Marshall order to reduced stored combustibles in his unit.

The landlord countered that the Fire Marshall re-inspected the tenant's unit, and that although there was improvement, he was still not completely satisfied to date.

Analysis

The landlord bears the burden of proving the grounds for issuing a 1 Month Notice to End Tenancy. The landlord's evidence is that the Notice to End Tenancy was precipitated by a series of complaints that started in the fall of 2010. From that time, there has been seven written complaints; three from tenant V.K.; three from tenant D.H. over an incident on January 5th, 2011 (the noxious odours) and January 11th, 2011 (tenant losing his balance); and one from tenant J.T. over the January 11th incident. I find on the evidence that the tenant did have incidents that affected the quiet enjoyment of other tenants in the complex, and not only K.V. The Fire Department's report is also of concern in the context of safety for other occupants and the landlord.

I find that the landlord had sufficient cause to serve the tenant with the Notice to End Tenancy and this portion of the tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's notice to end tenancy is valid. At the hearing, the landlord did not make an oral request for an order of possession pursuant to Section 55(1) of the Act; if necessary, the landlord may make an application for dispute resolution and request an order of possession.

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 01, 2011.

Residential Tenancy Branch