



Dispute Resolution Services

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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 *1 Month Notice to End Tenancy for Cause* (the Notice).

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue to be Decided

Should the Notice issued May 17, 2011, be cancelled?

Background and Evidence

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.

Tenant has engaged in illegal activity that has, or is likely to:

- Adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

This tenancy began on June 16, 2007. The Landlord's agent submitted that the Landlord has had concerns with respect to this tenancy since shortly after the Tenant moved in. The Landlord's agent read from a two page document submitted in evidence, which outlines 8 incidents of concern from June 21, 2007 to January 1, 2010.

The Tenant's advocate submitted that these were incidents that occurred years ago and that the Tenant was never warned with respect to these incidents until receiving the Notice.

The Landlord's agent stated that the Notice was issued based primarily on an incident that occurred on May 14, 2011. She stated that the Tenant was arrested for sexual assault and that the building manager and other tenants in the building are concerned for their safety. She stated that the Tenant's arrest and the events leading up to it had a major impact on the building manager and the tenants who were present on that day. The Landlord's agent stated that some elderly residents were worried that this would happen again. She testified that the building manager was disturbed at 7:00 p.m., 11:00 p.m., 2:30 a.m. and 5:00 a.m. by the police using the intercom to gain access to the building and the rental unit. The Landlord's agent requested an Order of Possession to be effective on June 30, 2011.

The Tenant's advocate testified that on May 14, 2011, the Tenant and a female friend were drinking in the Tenant's room. The female friend does not live in the rental property. The Tenant's advocate stated that the Tenant adamantly denies assaulting the woman and that the woman fabricated a story. The Tenant's advocate submitted that although the Tenant has been criminally charged he remains innocent until proven guilty. The Tenant's advocate stated that the Tenant's female co-workers and employer are aware of the charges and have taken no action against the Tenant. The Tenant's advocate further submitted that even if the allegations were true, which is denied, these actions did not adversely affect the quiet enjoyment, security, safety or physical well being of other occupants. The Tenant provided letters of reference in

evidence from two other tenants in the rental property which attest to the Tenant's good character and gentle nature.

Analysis

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

I find that the Landlord has not provided sufficient evidence that the Tenant has engaged in illegal activity and this reason for ending the tenancy is therefore unproven.

Based on the verbal testimony and documentary evidence provided by both parties, I find that the Landlord has not provided sufficient evidence 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. The events the Landlord referred to prior to May 14, 2011, are extremely dated and no action was taken by the Landlord at the time of their occurrence. A single incident or disturbance in and of itself is not sufficient reason to end a tenancy.

The Landlord has failed to provide sufficient cause to end this tenancy and I grant the Tenant's application to cancel the Notice. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Notice to End Tenancy issued May 17, 2011, is **cancelled**. The tenancy remains in full force and effect until it is ended in accordance with the provisions of 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 23, 2011.

Residential Tenancy Branch