



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on June 03, 2011. The landlord was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

The landlord states the tenant has used their wrong address on his application and state they only received the tenants' application and notice of hearing and have not received the tenants' evidence package. They claim the tenant put the wrong address on his registered mails. They state they only got the first mail because the mail man knew them and he delivered the hearing documents to them. They state they have never received the evidence package.

The tenant states both packages were sent to the landlords service address as given on the Notice to End Tenancy. The tenant states if the landlords had a different address then he simple went by the address they had given him. The tenant has provided documentary evidence showing the address the documents were sent to in two separate packages.

As the landlord agrees their address on the application is incorrect and have provided a new address I have amended the landlords address on the application. With regard to the landlords claim that they did not receive the tenants evidence because this had been sent to another wrong address for the landlord. I have looked at the address given by the landlord on the tenants One Month Notice. This address is indicated to be the landlords' service address and this is the same address the tenant has used to send his hearing documents and evidence to the landlord. As this address was provided by the landlord and the tenant relied on this address when he served the landlord then I consider the landlord to have been served five days after posting pursuant to s. 90 of the Act.

Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both Parties agree that this tenancy started on March 01, 2011. The rent for this unit is \$760.00 per month and is due on the first of the month. This was a fixed term tenancy until February 28, 2011 but has now reverted to a month to month tenancy.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on January 31, 2011. The landlord testifies that they tried to serve the tenant in person but he refused service in this manner. The landlord states it was later posted to the tenants' door. This Notice has an effective date of June 30, 2011. The Notice gave the following reasons to end the tenancy:

- 1) The tenant or a person permitted on the property by the tenant has:
 - (i) significantly interfered with or unreasonable disturbed another occupant or the landlord
 - (ii) Seriously jeopardized the health, safety or lawful right of another occupant or the landlord
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has, or is likely to:

(i) Adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord,

(ii) Jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testifies that the tenant has disturbed other tenants living in the building with yelling, screaming and banging noise from his unit. The landlord states the tenant was given a warning letter but these noises continued day and night. The landlord states they continued to get complaints from other tenants. The tenant has now been served with three warning notices all provided in evidence. The landlord states she has also spoken to the tenant about this noise and on May 29, 2011 the landlord had to call the Police.

The landlord testifies that on this occasion she was in the laundry room and could hear someone screaming. She states she went into the lobby and saw the tenant come into the building screaming and states he continued to scream from the lobby to his room. She states he then went into his room locked the door and continued to scream. She states she went downstairs and could still hear him screaming so that's when she called the police. The landlord states it took about half an hour before the tenant stopped screaming and then she heard the tenant leave his unit. The landlord states she called the police back and told them not to come as the tenant was now quiet.

The landlord testifies that she has received numerous compliant letters from other tenants and 24 other tenants have signed a compliant letter regarding this tenants' behaviour. In this letter the tenants have complained about the fact that this tenant has disturbed them, that he would yell, scream, bang on the walls and slam his door for hours at a time both day and night and have asked the landlord to restore peace to the building. The landlord has also provided numerous compliant letters received by them from other tenants regarding disturbances to their sleep and states the tenants' behaviour affects other tenant's right to quiet enjoyment of their units and affects their health because they cannot sleep. The landlord testifies that the tenants neighbour has stated that they are scared by the tenant and worried about his erratic behaviour. The landlord states these tenants have to get up for work and due to the noise sleep is becoming impossible and making their living conditions unbearable.

The landlord agrees that the tenant is not engaged in an illegal activity. The landlord requests that the One Month Notice to End Tenancy is upheld and seek an Order of Possession effective on the date of the Notice.

The tenant disputes the landlords' claims. The tenant testifies that the person living beneath his unit has a loud stereo which could be making the noise he is being blamed for. The tenant states he works part time in the day and goes to bed early at night. The tenant states he believes the landlord has him confused with another tenant. The tenant testifies that he did not walk into the lobby screaming on the day the landlord has testified and states his door lock is broken so sometimes his door will close loudly.

The tenant testifies that he only received one warning letter from the landlord and states at that time he had found a box and was refurbishing it. He states he could have made some noise then but after he got the letter he was quiet.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the One Month Notice to End Tenancy; in this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have taken into account each Parties argument and although the landlord claimed the police had been contacted about the tenant, I find that there is no evidence of an illegal act as alleged on the One Month Notice. However, I find that there is ample evidence that the tenant has significantly interfered with and unreasonably disturbed other occupants of the rental property. The landlord has provided a letter signed by 24 other tenant's concerning the noise from the tenants unit. The landlord has also provided the other complaint letters sent to the landlord from other tenants to corroborate the landlords' testimony that the tenant is responsible for the disturbances. Although the tenant argues that this is a case of mistaken identity I do not find it

likely that 24 other tenants would also be mistaken as to who is responsible for these disturbances.

Consequently, I find that there are grounds for issuing the One Month Notice to End Tenancy for Cause dated May 30, 2011 and the tenant's application to cancel it is dismissed. However under s. 90 of the Act, the One Month Notice to End Tenancy for Cause is deemed to have been received by the tenant 3 days after it was posted (or on June 02, 2011), and as a result, the effective date of that Notice has been amended to July 31, 2011 pursuant to s. 53 of the *Act* rather than June 30, 2011 as the landlords agree the tenant refused the Notice in person and so they posted it to his door.

Conclusion

The Tenant's application is dismissed. The One Month Notice to End Tenancy for Cause dated May 30, 2011 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective July 31, 2011. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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 27, 2011.

Residential Tenancy Branch