



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the hearing.

The tenant asked to adjourn the hearing to give him opportunity to retain legal counsel. The tenant explained that in the week prior to the hearing, he had received the landlord's evidence which included a letter of complaint which alleged that the tenant was dealing drugs. The tenant testified that he was concerned that he could not adequately represent himself. The tenant was unable to provide a reason why he had made no steps to obtain counsel in the week which had elapsed between receiving the landlord's evidence and the hearing. I found that because the tenant had not taken any such steps and because there was prejudice to the landlord in delaying the hearing, that the hearing should proceed as scheduled and I denied the request for an adjournment.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenancy began in 2007 and that on May 17, 2011 the tenant was served with a notice to end tenancy for cause (the "Notice"). The Notice alleges 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, that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and that the tenant has breached a material term of the tenancy agreement.

The rental unit is located in a seniors' housing complex. The tenancy agreement does not prohibit smoking in the rental unit, but the landlord has attempted to make the building a smoke-free building and has asked the tenant to ensure that the rental unit is ventilated so smoke does not drift into the common areas.

The landlord testified that in April 2009 she received a total of 4 complaints about noise by the tenant's guests. In June 2010 the landlord advised the tenant in writing that he was "given notice about the level of smoke smell in the hallway" and noted that she had noticed high noise levels.

In December 2010 there was an incident in which the tenant's guest created a disturbance when he left the unit in the early hours of the morning. In January 2011 the landlord issued a letter to the tenant advising that there had been further noise complaints about him and his guests and complaints about the smell of smoke.

In April 2011 the landlord issued a letter to the tenant advising that they had received complaints about the smell of smoke and advising the tenant that no one but himself was to reside in the rental unit. The landlord testified that in May 2011 she received complaints that the tenant or his guests had made excessive noise related to the installation of a countertop and shelves.

The landlord testified that she has received complaints from other residents that the tenant's guests have disturbed them in an effort to gain entry to the building and that they were unwilling to testify or provide written statements because they feared for their lives. The landlord indicated that there are rumours that the tenant has a gun and is possibly dealing drugs.

The landlord suggested that the practice of the tenant's guests to exit through a side door has compromised the security of the building.

The tenant acknowledged the incident in December 2010 but testified that he does not have guests over late at night and that any noise has not been unreasonable. The tenant testified that he is in the habit of smoking outside the building and strenuously denied dealing drugs or owning a gun. He stated that there has been some tension between himself and one of the other tenants and that he feels he is being harassed.

Analysis

The landlord bears the burden of proving that there are grounds to end the tenancy. I find insufficient evidence to prove that the tenant has engaged in any illegal activity whatsoever and further find that there is insufficient evidence to prove that the tenant breached a material term of the tenancy agreement.

I find that the smell of smoke cannot found a notice to end tenancy. The tenant is not prohibited from smoking in his rental unit and while he has graciously acquiesced to the landlord's desire to maintain a smoke free building, he is not obligated to do so.

The landlord suggested that other tenants feared for their lives, but I can find no rational basis on which they can hold that apprehension. While noise may be disturbing, particularly in a seniors' building, I can see no reason why the sound of voices should be considered life threatening.

The landlord presented hearsay evidence of noise complaints from other tenants, which were denied by the tenant. In the absence of direct testimony from other tenants regarding specific noise complaints, I prefer the testimony of the tenant to the hearsay evidence of the landlord. While I accept that there have been incidents in which the tenant has been excessively noisy, in order to establish grounds to end the tenancy, any disturbance must have been significant and I am unable to find that it has been significant. I therefore order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

I encourage the parties to work cooperatively with each other to create a pleasant living environment for all concerned and I specifically urge the tenant to exercise sensitivity toward other tenants, keeping in mind that they are seniors who may feel more vulnerable than others might.

Conclusion

The Notice is set aside.

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