



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

This Hearing dealt with the Tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice) and to recover the cost of the filing fee from the Landlord.

Both parties appeared at the Hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenants served the Landlord with the Notice of Hearing documents, by providing the Landlord's agent with the documents on or about June 15, 2011.

The Landlord provided documentary evidence to the Residential Tenancy Branch (the "RTB") and to the Tenant, but the evidence was not submitted until 2 clear days (i.e. not including the date it was submitted and the date of the Hearing) before the Hearing date. Documentary evidence must be provided to the RTB and to the other party as soon as possible, but in any event at least 5 clear days before the Hearing date. Therefore, I advised the Landlord's agent that I would not consider the documentary evidence and invited him to provide me oral testimony with respect to this evidence.

Issue to be Decided

Should the Notice issued June 10, 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;
- Seriously jeopardized the health or safety or lawful right of 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;

The Landlord's agent testified that the Tenant was issued warnings in June, July and November of 2010 with respect to his outbursts and raging that were disturbing other occupants of the rental property. He stated that since the last warning, the Tenant has been behaving appropriately.

The Landlord's agent testified that the Tenant brought a sex trade worker into the rental unit on June 10, 2011. He stated that the rental property is an alcohol and drug free building and that the Landlord is concerned that this could precipitate drug abuse among the occupants of the rental property because the sex trade industry plays a big part in the drug trade.

The Tenant denied bringing a sex trade worker into the rental property. He stated that the person was just a street person who he brought in to have a shower and get something to eat.

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.

In 2010, the Landlord issued three letters of warning with respect to the Tenant's loud outbursts and aggressive behavior. The Landlord's agent testified that there have been no similar incidents since November, 2010. I find that since November, 2010, the Tenant has complied with the Landlord's warnings about behavior and that therefore the Landlord has not provided sufficient evidence that the Tenant is currently significantly interfering with or unreasonably disturbing another occupant or the Landlord; or seriously jeopardizing the health or safety or lawful right of another occupant or the Landlord. The time to issue a Notice to End Tenancy based on those incidents that occurred in 2010 has past. However, the Tenant is strongly cautioned that he has been warned and that **any future aggressive our profane outbursts could give rise to the Landlord issuing another Notice to End Tenancy.**

I find that the Landlord has not provided sufficient evidence that the Tenant engaged in illegal activity.

Therefore, 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.

The Tenant has been successful in his application and is entitled to recover the filing fee from the Landlord. The Tenant may deduct **\$50.00** from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

Conclusion

The Notice to End Tenancy issued June 10, 2011, is **cancelled**. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is strongly cautioned that he has been warned and that **any future aggressive our profane outbursts could give rise to the Landlord issuing another Notice to End Tenancy.**

The Tenant may deduct **\$50.00** from future rent due to the Landlord.

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: July 07, 2011.

Residential Tenancy Branch