

DECISION

Dispute Codes MT, CNC, MNDC

Introduction

This is an application filed by the Tenant to allow for more time to make an application to cancel a notice to end tenancy. If allowed the Tenant seeks an additional 1 month to vacate the rental unit and a request for a monetary order for compensation for loss of quiet enjoyment.

Both parties attended the hearing by conference call and gave testimony.

The issue of jurisdiction was brought forward by the Landlord. Both parties agree that no signed tenancy agreement exists. The Tenant has been living at the unit for 2 years and 9 months as his primary residence. The Tenant receives his mail at the hotel. The Landlord has conceded that the Tenant resides at the hotel as his primary residence and that he is considered a long term guest. I find that a tenancy agreement exists and that jurisdiction in this case falls within the Residential Tenancy Act.

At the beginning of the hearing, the Tenant stated that the application for more time is withdrawn. The Tenant's application for dispute was filed within the allowed time frame of 10 days from the date of receiving the notice.

The Tenant has filed an amendment dated August 18, 2011 seeking to amend his application to contest the notice to end tenancy. The Landlord has not filed any evidence. The Landlord confirms that he received the Tenant's evidence packages with the amendment.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for cause?
Is the Tenant entitled to a monetary order for compensation for loss of quiet enjoyment?

Background and Evidence

Both parties agree that the Tenant has been residing at the hotel as a long term guest for approximately 2 years and 9 months. The Tenant makes payments of \$600.00 per month payable on the 1st of the month. No security deposit was required by the Landlord.

The Landlord states that the Tenant has seriously jeopardized the health of safety or lawful right of another occupant or the Landlord. The Landlord claims that he received numerous complaints of threatening comments to staff by the Tenant. The Landlord also claims that he received noise complaints that the Tenant has disturbed other Tenant's with excessive noise from yelling and the television on at night. The Tenant disputes these claims stating that he has not made any threats or had any excessive noise come from his room. The Landlord has not supplied any documentary or direct testimony to support this reason for cause on the notice. The Landlord has also given a reason for cause that the Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the Landlord. The Landlord has provided no evidence to support this claim.

The Tenant is also seeking a claim of \$600.00 for loss of quiet enjoyment of the rental unit. The Tenant states that this is an arbitrary amount not based on any loss. The Tenant states that he has not lost the use of any portion of the rental unit, but that the basis for his claim is harassment from hotel staff. The Tenant has provided 3 letters from the Landlord as "eviction letters". A letter dated December 16, 2009 to the Tenant refers to non payment of rent and a warning that if rent is not paid by December 18, 2009 that the Tenant is required to vacate the premises by December 18, 2009 at 2:00pm. The next letter is dated June 16, 2010 regarding hotel policy on the conduct of guest. It refers to all rooms in the hotel as non-smoking rooms and a "quiet time" between 10:00 p.m. and 6:30 a.m. The letters is "written notice about excessive noise coming from your guest room after 10:00 p.m." The letter also states if further noise complaints arise that it could result in eviction. The Tenant has further referred to a letter dated June 30, 2011 that refers to payments for guest rooms. It refers to the Tenant's account being in arrears. The Landlord disputes that these issues were all brought to the attention of the Landlord by the Tenant who resolved each in a timely manner. The Landlord told the Tenant that these were errors and not to worry about them. The Tenant has confirmed this in his direct testimony.

Analysis

As both parties have attended the hearing by conference call and have confirmed receipt of the Tenant's evidence, I am satisfied that that the Landlord was properly served with the notice of hearing and evidence packages. The Landlord has not filed any evidence.

Based upon the documentary evidence and the direct testimony of both parties, I find that the Landlord has failed to establish cause in the 1 month notice to end tenancy. The Tenant is in dispute over the reasons provided in direct testimony by the Landlord. The Landlord has not provided any supporting evidence. As such, I set aside the notice to end tenancy. The Tenancy shall continue.

Section 28 of the Act addresses Protection of Tenant's rights to quiet enjoyment, and provides in part as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

As well, Residential Policy Guideline #6 speaks to "Right to Quiet Enjoyment," and provides in part:

Temporary discomfort or inconveniences does not constitute a basis for a breach of the covenant for quiet enjoyment.

Having reviewed both the documentary and direct testimony of both parties, I find there is insufficient evidence of a specific chronology of alleged threatening behaviour and harassment. The Tenant himself went to the Landlord to deal each time with the letters, which were responded to in a timely manner and resolved as errors. I find that the Tenant has failed to establish a claim for compensation and dismiss the claim.

Conclusion

The Landlord's 1 month notice to end tenancy for cause is set aside. The Tenancy shall continue. The Tenant's application is dismissed.

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: August 25, 2011.

Residential Tenancy Branch