



Dispute Resolution Services

Page: 1

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 parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

The tenant was present with a legal advocate.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

This month to month tenancy began on August 1, 2005, monthly rent began at \$425.00 and is currently \$440.00 and the tenant paid a security deposit of \$217.00 at the beginning of the tenancy.

The residential building contains 77 units and has six floors. The tenant's rental unit is on the second floor.

The evidence and testimony indicate the landlord issued the tenant a 1 Month Notice to End Tenancy for Cause (the "Notice") on July 5, 2011, with a stated effective move out date of August 31, 2011.

The cause as stated on the Notice listed that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk, jeopardized a lawful right or interest of another occupant or the landlord, knowingly gave false information to a prospective tenant or purchaser of

the rental unit, or that the tenant engaged in illegal activity that has or is likely to damage the landlord's property, adversely affect the quiet enjoyment of another occupant or landlord and jeopardize a lawful right or interest of another occupant or the landlord.

The landlord's relevant testimony in support of the Notice included:

The landlord, who is the property manager, became manager in 2010. Prior to that he was assistant manager and has a long history with the tenant.

Shortly after becoming property manager, the tenant became irate at his, the landlord's, choice of maintenance worker. The tenant and the maintenance worker do not get along and have both called the police a number of times against each other.

The landlord has tried to sit down with the tenant in an effort to correct the tenant's behaviour, but has not been successful. The behaviour includes putting out an assortment of food for animals all over the premises, which has resulted in attracting rodents, vermin and birds, which have created a health hazard for the tenants and the residential building.

Although the tenant has responded that he is only feeding the birds in the park next to the residential building, the landlord, along with a number of tenants, have witnessed the tenant put the food out in early morning hours when he thought no one was watching. The landlord admitted that the tenant does feed the birds in the park, but the tenant does put a significant amount of food at the perimeter of the premises, along the fence, and on the property itself.

The landlord has received a significant amount of ongoing complaints, dating back several years, from other tenants about the health hazard created by the vermin and rodents, as well as the birds' noises starting very early in the morning, waking the other tenants.

The landlord has observed the tenant going out early in the morning, looking side to side to ensure no one is looking, then dashing to put the food out.

The landlord submitted statements from at least thirteen tenants in the residential building. One female tenant stated that she does not feel safe in her home due to the behaviour of the tenant, which includes his screaming profanities for at least 45 minutes at a time. The tenant stated this has caused another elderly tenant to be terrified to leave her home.

Another female tenant submitted that the tenant scares her with his strange behaviour, which started out with his growling at her like an angry dog when passing each other. This has escalated into the tenant growling like the dog in her ear, and calling her profane names.

Another tenant, who has lived in the residential building for 15 years, has witnessed the tenant putting out food on the premises, but has given up speaking to him about it as he, the other tenant, is subject to the "screaming tirades" of the tenant. Additionally, the other tenant stated that the tenant has his television blaring most mornings beginning at 4:00 a.m.

The residential building is listed as "crime free;" however, the tenant's behaviour has caused the constables assigned to the building to attend the premises an extraordinary number of times, including the day the tenant received the Notice, as he went door to door to each of the other tenants who had signed the documents against him.

The tenant's relevant testimony included:

The tenant denied going door to door after receiving the Notice.

The landlord is preventing him from speaking with the owners of the building.

The landlord has orchestrated and fabricated all documents in the landlord's evidence package, which were signed by the other tenants. The landlord has campaigned against him for a number of years.

The tenant does not feed the crows early in the morning, as crows are not out that early. The birds are robins and they do not make that kind of noise.

The tenant is not putting food on the premises; he is only feeding the birds in the park next to the premises.

The tenants who have stated they witnessed the tenant putting food on the premises, which are creating a health hazard, are lying and being led by the landlord to fabricate the allegations.

The tenant's advocate pointed out that the tenants' statements appear to have originated from the same printer, calling into question the authenticity of the documents.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Once the tenant made an Application to dispute the Notice, the burden of proof is on the landlord to prove the causes listed on the Notice.

As the landlord has failed to demonstrate that the tenant has engaged in any illegal activity, I have not considered these causes.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to substantiate that the tenant significantly interfered with and unreasonably disturbed another occupant of the residential property and seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

In reaching this conclusion I find the landlord provided credible testimony and submitted convincing evidence such that I find that on a balance of probabilities the behaviour of the tenant significantly interfered with and unreasonably disturbed another occupant of the residential property and seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

I was persuaded by the female tenants' statements that they felt threatened and scared by the behaviour of the tenant in growling like an angry dog into one female tenant's ear, calling the tenant profane names and screaming profanities for long periods of time. I accept this evidence and I find this behaviour displays complete disregard by the tenant for the other occupants' right to quiet enjoyment and right to safety.

I also accepted the landlord's and other tenants' statements that the tenant continued to put food all around the premises, attracting vermin and rodents and creating a health hazard for the other tenants in the residential building. I find this behaviour by the tenant jeopardized the other tenants' health and safety.

I find the other tenants' statements to be consistent and compelling and were of such a serious nature, the landlord had no alternative but to seek the end of the tenancy with this tenant.

I was further persuaded by the landlord's documentary evidence which demonstrates that he issued the tenant several warnings about his behaviour of spreading food about the premises, and that the penalty of continuing on would result in an eviction notice.

I find the tenant's testimony that the landlord has orchestrated and fabricated all the complaints against him to be unconvincing and implausible.

Based on the preponderance of evidence presented to me, I find the landlord has shown that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health and safety or lawful right of another occupant or the landlord and I find the evidence supports that this tenancy should end for cause.

I therefore **dismiss** the tenant's application, **without leave to reapply**.

Under Section 55 of the Act, if a tenant's application to cancel a Notice has been dismissed, I may grant the landlord an order of possession. However, the landlord at the hearing did not make an oral request for an order of possession. I therefore have not granted an order of possession in favour of the landlord.

The landlord is at liberty to make their own application for an order of possession.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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 05, 2011.

Residential Tenancy Branch