



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNDC, OLC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a Notice to End Tenancy issued for cause, to obtain a monetary order, for an order for the Landlord to comply with the Act or tenancy agreement, to suspend or set conditions on the Landlord's right to access the rental unit, and recover the filing fee for the Application.

The Tenant was represented by an Advocate at the hearing, who testified the Tenant could not call into the hearing as he was in a desert with no cell phone service. The Agent for the Landlord alleged the Tenant had gone to a music festival in the desert and that was why he did not attend.

The Advocate for the Tenant, an Agent for the Landlord and a police witness appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Is the Tenant entitled to the other relief sought in his Application?

Background and Evidence

This tenancy began on June 1, 2010. The parties entered into a written tenancy agreement.

The Agent for the Landlord testified that the Landlord has been receiving noise complaints regarding the subject rental unit from other occupants of the residential building. The noise complaints were initially oral and then began to be in writing. These written noise complaints were entered into evidence and are dated from April, May and

August of 2011. The Landlord sent the Tenant warning letters regarding the noise complaints of April and May and warned him his tenancy was in jeopardy.

Late on the night of July 31 and into the early morning of August 1, 2011, a large disturbance took place at the building. The Tenant had allowed a person, who was allegedly being stalked, to enter the rental unit with some other people. A fight broke out at the building when the alleged stalker showed up at the rental unit. A staircase leading up to the building was damaged to such an extent it has to be replaced. Later, someone threw a rock through the window of the rental unit. The Tenant alleges it was the stalker.

On August 1, 2011, the Landlord served the Tenant with a one month Notice to End Tenancy for cause, alleging the Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk. The Landlord also alleges the Tenant has failed to comply with a material term of the Tenancy Agreement and has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

The Landlord had a police constable provide testimony at the hearing.

The constable testified he is involved in a crime free housing initiative, helping landlords and tenants to live in safe environments, and to keep crime out of rental buildings.

The constable testified he is aware of police attendances at the rental unit. In particular he was aware of the police attendance in the early morning of August 1, 2011, at the rental unit.

The constable testified that he is even more concerned about the safety of the other occupants after the recent behavior of the Tenant. The constable testified this recent behavior is more damaging to the safety of the other occupants than the late night noise.

The constable testified he has been contacted by other occupants at the rental unit who have reported that the Tenant has approached them and made threatening comments about calling the police or giving evidence against him in this matter.

The constable testified that the Tenant has been going to the doors of other renters in the building and challenging them and being aggressive about providing evidence for the hearing.

The constable further testified the Tenant has been challenging and questioning other occupants in the building if they had called the police on him. The constable testified that one of the occupants was told he better keep his mouth shut and not call the police.

In reply, the Advocate for the Tenant testified the Tenant had made a request to obtain police records, but these were not available prior to the hearing. The Advocate spoke about the good character of the Tenant.

The Advocate for the Tenant testified the Tenant did not feel he was at fault for the incident which occurred on the staircase as he had no control over the alleged stalker appearing at the rental unit.

The Advocate for the Tenant testified that the Tenant felt the Landlord had illegally entered the rental unit and he changed the locks at the rental unit. The Tenant had a complaint about the locks to the rental unit.

The Advocate had little knowledge of the Tenant's other claims.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant's Application to cancel the Notice to End Tenancy must be dismissed.

I find that the Notice to End Tenancy is valid as I find that the Tenant has significantly interfered with and unreasonably disturbed other occupants of the building. I find there was excessive noise coming from the rental unit which has unreasonably disturbed other occupants.

I further accept the testimony of the police constable that the Tenant has challenged and threatened other occupants of the building regarding calling the police or providing evidence against the Tenant. I find this has significantly disturbed the other occupants and has seriously jeopardized their safety and lawful rights.

Following my dismissal of the Tenant's Application, the Agent for the Landlord requested an order of possession. Under section 55 of the Act I must grant that request, and I issue the Landlord an order of possession **effective at 1:00 p.m. September 30, 2011.** (There is an incorrect effective date of August 31 on the Notice which automatically corrects under the Act to September 30, 2011.)

I also caution the Tenant that the Landlord may still apply for an immediate order of possession to end the tenancy earlier than the end of September, if the behaviour of the Tenant continues to disturb other occupants of the building, and in particular, if the Tenant acts in a threatening manner against any of the occupants.

The Tenant had other claims in his Application which his Advocate had little knowledge of, and therefore, the Tenant had insufficient evidence to prove these claims. I dismiss those claims without leave.

Conclusion

The Application of the Tenant is dismissed as the Notice to End Tenancy had merit. The Tenant had insufficient evidence on the other claims and those are dismissed as well.

The Landlord is granted an order of possession effective at 1:00 p.m. September 30, 2011. If the Tenant continues to disturb other occupants, either with noise or threats, the Landlord may apply for an immediate order of possession, ending the tenancy before the end of September.

This decision is final and binding on the parties except as otherwise provided for under the Act, and 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: September 06, 2011.

Residential Tenancy Branch