



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting that a One Month Notice to End Tenancy be cancelled.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled or not?

Background and Evidence

The parties confirmed that they have a written tenancy agreement and that the tenancy commenced on April 01, 2009. The parties stated that the rent is \$361.00 per month which includes cable, and the rent is due on the first of each month. The Tenant still resides in the rental unit at this time.

The Tenant confirms that he received a One Month Notice to End Tenancy for Cause on the evening of Monday, October 24, 2011, as he found it posted on the door to his rental unit. The Notice has no date below the Landlord’s signature to indicate when it was issued, however the parties confirm it was received. The Landlord states that he posted the Notice at 5:00 P.M. on October 24, 2011 on the door of the rental unit. The reasons listed on page two of the Notice served on the Tenant state that the Notice was issued because the “Tenant or a person permitted on the property by the Tenant has: significantly interfered or unreasonably disturbed another occupant or the Landlord; put the Landlord’s property at significant risk; and 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; jeopardize a lawful right or interest of another occupant or the Landlord.”

The Landlord states that the Notice was issued after the building caretaker received complaints from other tenants about an individual, who was not a tenant of the building, who was causing a disturbance outside the door of the Tenant’s rental unit on the second floor and later outside the windows of other tenant’s suites on the first floor. The

Landlord states that there are vulnerable tenants living in this building and that he takes tenant complaints very seriously. The Landlord provided no witnesses at the hearing with regards to the events and the building caretaker was not in attendance at the hearing. The Landlord states the individual causing the disturbance was known to the Tenant and was trying to access the Tenant's rental unit, however the Tenant was not responding to the disturbance outside his door. The individual causing the disturbance then had a beer with a neighboring tenant and calmed down and left. The Landlord states that the individual later was outside the building knocking on the windows of tenants on the first floor. The Landlord alleges that the individual was on drugs and was trying to access the Tenant's suite to get money.

The Tenant states that he was away on the weekend when the individual came by the building and that he did not let the individual into the building, but another tenant must have done so. The Tenant states that he is in a scooter and has no toes, and he says he has very few visitors. The Tenant states that his neighbor told him after the weekend when he returned, about this individual coming by the rental unit on Saturday October 22nd while he was away and that the neighbor calmed the individual down and the neighbor had a few beers with the individual. The Tenant states that the individual identified by the neighbor is a person the Tenant has met before through street outreach, however, the Tenant states that he is not sure why the individual came to his home while he was away, and he states the individual is not a friend of his and is not welcome at the building, and that he has no money or other items belonging to this individual.

The Landlord states that if the Tenant attracts unwelcome individuals to his rental unit, then it is the Tenant's fault. The Landlord states that it is not his intent to evict the Tenant at this time, but rather his intent is to warn the Tenant that any further breaches of the tenancy agreement, Act, or security breaches at the building will not be tolerated.

The Tenant is requesting that the Notice be cancelled.

Analysis

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

I accept the parties' evidence that the Tenant was served with the One Month Notice to End Tenancy for Cause on Monday, October 24, 2011. However, I find that the One Month Notice to End Tenancy for Cause was not issued in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. The reasons listed on page two of the Notice, which derive from section 47 of the Act, have not been proven by the Landlord as caused by the Tenant or by a guest of the Tenant. The Landlord has failed to prove that the Tenant has breached the Act, Regulation, or tenancy agreement.

There is no dispute that someone let an individual into the building that caused a disturbance to a neighboring tenant and other tenants. The tenants who made a

complaint to the Landlord about any disturbances from the individual that affected them did not attend the hearing to present any evidence about the incident. The evidence provided at the hearing indicates that the Tenant was not at home, and there was no contact made with the Tenant to see if he could be of any help in dealing with the individual causing the disturbance. There is no evidence that the Tenant let this individual into the building or that this person was the Tenant's guest that weekend, rather it is unclear how this individual was let into the building or whether the Landlord has adequate security in place or building rules to prevent unwelcome individuals from accessing the building.

I additionally note that the Landlord failed to put the date the Notice to End Tenancy was issued on the Notice document. The Notice specifically provides a space below the signature area for the date of issuance to be entered, and this is blank on the document served on the Tenant. Nowhere on the Notice does it state that it was issued to the Tenant on October 24, 2011. Thus, I also find that the Notice is not valid as it was not issued in accordance with section 52 of the Act which requires that for the Notice to be effective it must be signed and dated by the Landlord giving the Notice.

Based on the above-mentioned reasons and based on the Landlord's statement, that he does not want the Tenant evicted at this time, I order that the One Month Notice to End Tenancy, served on October 24, 2011, be cancelled.

Conclusion

I have granted the Tenant's request to cancel this Notice to End Tenancy.

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: November 24, 2011.

Residential Tenancy Branch