



Dispute Resolution Services

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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 Notice to End Tenancy for Cause. Both parties appeared at the hearing 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.

On a procedural note the name of the landlord has been amended, by mutual agreement, to correctly identify the landlord as it appears on the Notice to End Tenancy.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The tenancy commenced April 29, 2011 and the tenant is required to pay subsidized rent of \$359.00 by the 1st day of every month. On October 21, 2011 the landlord issued 1 Month Notice to End Tenancy for Cause (the Notice) and personally served it upon the tenant that day. The tenant disputed the Notice within the time limit required under the Act.

The Notice has an effective vacancy date of November 30, 2011 and indicates three reasons 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; and,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that upon receiving complaints from other tenants the tenant was given a written warning on June 15, 2011 about loud noise coming from his unit. The landlord received a written complaint dated October 17, 2011 about a dog being in the rental unit and a written complaint October 20, 2011 about the source of vandalism and other activity coming from the rental unit. The landlord submitted that other tenants also complained verbally about excessive noise coming from the rental unit. The landlord explained that many tenants are fearful of retaliation and did not want to write a formal complaint.

On October 20, 2011 the landlord wrote the tenant a final warning letter and the landlord's staff person went to the rental unit to personally deliver the warning letter to the tenant. When the tenant opened the door of the rental unit, the landlord's staff person delivered the warning letter and observed a dog sitting on the tenant's couch. The staff person described the dog as a Pit Bull breed, mostly white with brown markings. The staff person told the tenant the dog was not allowed in the building and escorted the tenant and the dog out of the building.

The October 20, 2011 warning letter states:

Consider this your **final warning notice**. We have received letters of ongoing complaints from other tenants in the building.

Dating back we have a letter written to you as a warning dated June 15, 2011 regarding loud music played in your unit past 11:00 p.m.

This month we have received numerous complaints regarding a guest and a dog coming in and out of your suite. This impedes other tenants the rights to quiet enjoyment.

As per your signed tenancy agreement dated May 8, 2011 is states that having a pet in the building is prohibited as per your tenancy agreement with [name of landlord] section 21 clause:

21(B) The tenant my not keep pets in the rental unit and on the residential property only under written agreement by the landlord for those pets "Grandfathered", as may be amended from time to time.

Furthermore [name of building] has received complaints regarding a guest of your which attending of be placing our space at risk of unlawful activity and intimidation further questioning the safety of our tenants of [name of building]. If

[name of building] receives one more complaint, the next letter will be served as a 30 Day Notice to end tenancy.

[reproduced as written]

The landlord submitted that an independent security company was hired by the landlord starting October 20, 2011 to deal with suspected illicit activity on the third floor of the building. The security company provided reports of their observations to the landlord every day. The security guard's notes of October 20, 2011 record the following at 2100 hrs: "At about 2100 hrs. I saw a girl entered (sic) with dog in 301."

The landlord's staff person also testified that on October 21, 2011 he observed the same dog tied up outside the business of the landlord's commercial tenant on the ground floor. The dog was lunging at passersby. The landlord's staff person observed the tenant yell from his balcony that the dog was friendly.

On October 21, 2011 the landlord received another written complaint about disturbances in the late night and early morning hours on the third floor and a tenant having a pet in the building.

Based on all of the above, the landlord issued the Notice to End Tenancy on October 21, 2011.

The tenant acknowledged that he is aware that he is not permitted to have a pet in the unit or building; however, the tenant denied that he has ever had a dog in the rental unit or permitted a guest to bring a dog into the unit. The tenant also denied receiving a warning letter from the landlord's staff person on October 20, 2011 or being escorted out of the building. The tenant acknowledged petting a dog tied up outside of the building and submitted that it did not try to bite him.

The tenant submitted that he has asked other tenants if his music is too loud and they assured him it was not. The tenant attributes the sound of banging doors to the door in the hallway located near his unit. The tenant denied having guests over late at night.

I noted that the tenant had submitted the October 20, 2011 warning letter to the Residential Tenancy Branch in making his Application for Dispute Resolution. The tenant denied doing so. The tenant submitted that the only document he has received is the Notice to End Tenancy.

In support of the landlord's position, the landlord provided copies of complaint letters from other tenants; warning letters issued to the tenant June 15, 2011 and October 20,

2011; the Notice to End Tenancy; and, the security company's reports from October 20, 2011 through November 5, 2011.

With respect to the security company's reports the tenant requested the opportunity to question the security guards. The landlord stated the security guards had not been asked to be available to participate in the hearing.

The landlord verbally requested an Order of Possession effective December 31, 2011.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to establish that the tenancy should end for the reason(s) indicated on the Notice. Where a Notice to End Tenancy indicates more than one reason is it not necessary to prove each reason. Rather, showing the tenancy should end for one of the reasons indicated is sufficient. The burden of proof is based on the balance of probabilities meaning it is more than 50% likely the event occurred.

Although the tenant denied all of the allegations put forth by the landlord I find the landlord's submissions to be more credible than the tenant's submissions when I consider the tenant denied receiving the October 20, 2011 warning letter yet provided it to the Branch in making his application.

Further, the landlord has provided a preponderance of evidence, including verbal testimony of the staff person who witnessed a dog in the rental unit, written complaints by various tenants, and several reports from the security company, all of which support the landlord's position that the tenant has permitted a dog in his rental unit and that he or his guests have unreasonably disturbed other occupants. Upon consideration of all of the evidence I find I am satisfied the tenant, or a person permitted on the property by the tenant, has significantly interfered with or unreasonably disturbed other occupants of the property. I am further satisfied, upon review of the security guard reports that the disturbances and the dog being permitted in the building continued despite the tenant receiving the Notice to End Tenancy and it is unlikely the behaviour will cease if the tenancy were to continue.

In light of the above, I uphold the Notice to End Tenancy with the effect that this tenancy shall end. I grant the landlord's request for an Order of Possession effective December 31, 2011.

Conclusion

The Notice to End Tenancy has been upheld and the tenancy shall end. Provided to the landlord is an Order of Possession effective December 31, 2011 as requested by 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: November 17, 2011.

Residential Tenancy Branch