

DECISION

Dispute Codes CNC

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy for cause.

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

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the 1 month notice to end tenancy for cause?

Background and Evidence

The Tenant has submitted page 1 only of the 2 page 1 month notice to end tenancy for cause dated November 25, 2011 with a stated effective date of December 25, 2011 and a 1 page printed document "Legal Notice" received from the Landlord. The Landlord has not submitted any evidence.

Both parties agreed that there is no signed tenancy agreement and that the Tenancy began in January of 2011.

Both parties have confirmed the 4 reasons that were indicated on the notice. Reason number 1 is "Tenant has allowed an unreasonable number of occupants in the unit/site." The Landlord states that people arrive at the Tenants unit at odd times of the night and early mornings. Reason number 2 is "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or landlord." The Landlord states that approximately 2 weeks before the notice was served on the Tenant that she attended the rental unit and an incident occurred where the Tenants called her a "Bitch". Reason number 3 is "Tenant or person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord." The Landlord claims that the Tenants threatened her with physical harm. The Landlord did not report this threat to the police. Reason number 4 is "Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park." The Landlord states that the Tenants failed to inform the Landlord at the beginning of the tenancy in January that the Tenants brother would be occupying the rental with him. The Tenant disputes these reasons

given by the Landlord stating that this is an attempt by the Landlord to not properly serve them with a 2 month notice to end tenancy for Landlord's use. The Tenant further goes on to state that at the beginning of the Tenancy after it was learned that the Tenants brother was occupying the rental that there was an agreed upon rent increase to accommodate his brother staying there. The Landlord states that she has never given warning or notices to the Tenants for these issues to be corrected. The Landlord in fact states as an example that the

Analysis

As both parties have attended the hearing and have given detailed direct testimony over the dispute, I am satisfied that the Landlord was properly served with the notice of hearing and evidence package relied upon by the Tenant.

As there is no documentary or supporting evidence submitted by either party, I find that this falls to an issue of credibility. The onus or burden of proof is on the party making the claim. In this case the Landlord is responsible for establishing his reasons for cause to end the tenancy. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find on a balance of probabilities that the Landlord has failed to establish reasons for cause in her notice. The Tenant's application to cancel the 1 month notice to end tenancy for cause dated November 25, 2011 is granted. The notice is set aside.

Conclusion

The Tenant's application to cancel the notice is granted.

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: December 14, 2011.

Residential Tenancy Branch