



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 for Dispute Resolution for an order cancelling a 1 Month Notice to End Tenancy for Cause issued by the landlord.

The tenant and the landlord's agents appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

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 started in September or October, 2011, monthly rent is \$375.00, due on the 1st day of the month, and the tenant paid a security deposit of \$187.50. Neither the tenant nor the landlord submitted a written tenancy agreement and both were unclear of the tenancy start date.

The rental unit is single room occupancy in what is classified as supported housing program.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the tenant on December 1, 2011, via personal service, with a stated effective vacancy date of December 30, 2011. The effective move-out date as listed is incorrect, pursuant to

section 47 (2) of the Residential Tenancy Act (the “Act”), and automatically corrects under section 53 of the Act.

The cause as stated on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

In support of the Notice, the landlord’s agent testified that she is the program manager for the residential property, and on November 30, 2011, she heard voices in the hallway. Upon turning a corner, she observed the tenant punch a visitor in the face.

The agent directed the other agent to approach the visitor, who is known to the agents, to ask if would like to call the police. The visitor declined, whereupon the agents called the police for him.

The landlord’s agent submitted that the house rules, which are posted and known to the tenant, allow zero tolerance for physical or verbal violence and/or intimidation towards anyone. The landlord’s agent submitted that due to the violation of the house rules, the tenant should be evicted.

Upon query, the agent admitted that she has not issued any breach or warning letters to the tenant and has no proof on any other incident.

In response, the tenant admitted that he punched the visitor, but it was in self-defence, as the visitor swore at him and lunged to attack him.

Analysis

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

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.

Once the tenant made an Application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord or engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to prove the causes listed on the Notice. In reaching this conclusion I was persuaded by the landlord's inconclusive proof as to whether the tenant initiated the attack or was acting in self-defence. I was further persuaded by the lack of an escalating situation and repeated incidents.

I also considered that the landlord's have failed to issue the tenant any written letters, warning him that any future occurrence would result in the possible end of his tenancy.

I therefore find that the landlord has submitted insufficient proof to establish the causes listed on the Notice.

Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause is not valid and not supported by the evidence, and therefore has no force and effect. **I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

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 15, 2011.

Residential Tenancy Branch