



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel the One Month Notice to End Tenancy for cause and other issues.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this month to month tenancy started on March 01, 2010. Rent for this unit is \$550.00 per month which is due on the 1st day of each month.

The landlord testifies the tenant was served with a One Month Notice to End Tenancy for cause on November 21, 2011. This notice has an effective date of December 31, 2011. The landlords have given one reason to end the tenancy on the One Month Notice. This reason states the tenant has engaged in an illegal activity that has

adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testifies that the tenant has caused serious disturbances to other tenants. The landlord testifies that the tenant told him that he has a problem with alcohol. On the first occasion the landlord submits that the tenant had been drinking and was playing loud music. When the tenant was asked to turn the music down he became agitated, and hostile towards the landlord. He then dropped his shorts and 'mooned' to everyone in sight. The landlord submits that the tenant was called into the landlords' office and a conversation took place about his actions which cause disturbances to other tenants and the landlord. At this meeting the tenant told the landlord that he would stop this sort of behavior. The landlord states that no action was taken against the tenant at that time.

The landlord testifies that in September, 2011 there was an argument between this tenant and another tenant above him. The landlord states this tenant was seen going upstairs to the other tenant's floor with a broken bottle in his hand. Two other tenants stopped the tenant and the tenant then changed his mind and went back downstairs. At this time the police arrived and spoke to the tenant.

The landlord testifies that while he was showing a prospective tenant a suite another tenant came and told the other landlord that this tenant was acting up again. The landlord went to see the tenant who was on his deck. The landlord testifies that the tenant had been drinking again and started to make gestures to indicate that the tenant would cut the landlords throat. The landlord states the police were called again and the landlord has provided a file number from the police.

The landlord testifies that they now have other tenants threatening to move out if the landlords do not take action against this tenant. Other tenants live in fear and the disturbances from this tenant have left other tenants scared of this tenant. The landlord has provided letters from two tenants which document some of this tenants disturbances and actions.

The landlord testifies that they operate a crime free housing and the tenant has signed a crime free agreement. The tenant is now in breach of this agreement due to his behaviour when he has been drinking.

The landlords request that the One Month Notice to End Tenancy is upheld and request an Order of Possession effective on December 31, 2011.

The tenant's testify that he does have a problem with alcohol when he drinks while taking his medication. The tenant states there was an argument between himself and another tenant. The tenant recalls having a broken bottle but he states he did not attack the other tenant with it and went upstairs to apologise to the other tenant. The tenant states the police showed up and asked the tenant to calm down and sleep it off. The tenant states he also apologised to the police for his behaviour.

The tenant agrees he did 'moon' some people but as he was drunk he does not recall who was present or who would have seen him. The tenant states he had been drinking again while taking his medication and agrees he does become belligerent at this time. The tenant states he was not aware that the police had been called on this occasion as he went to bed to sleep it off.

The tenant states he does not deny the landlord accusations and agrees that his behaviour is unacceptable. The tenant states he is now seeing a counsellor for alcohol dependency and is not a treat to anyone. The tenant states he is willing to move out but just needs more time to move as he does not wish to be homeless.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy.

I find the tenant agrees he has caused disturbances to other tenants and although the tenant must be commended for trying to work through these problems with counseling the fact remains that the disturbances were of a nature which could be construed as an illegal activity when exposing himself in a public place and exhibiting threatening behavior towards another tenant and the landlord. While I accept that drinking alcohol in your own home is not a crime; If the tenant becomes threatening or causes other disturbances while under the influence of alcohol then the landlord does have grounds to end the tenancy.

Consequently, I find the landlord has established reasonable cause to end the tenancy. The Notice will be upheld and an Order of Possession has been issued to the landlord. As the landlord has requested the Order of Possession to be effective on the date given on the One Month Notice I am not at liberty to extend this time past this given date of December 31, 2011.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause dated November 21, 2011 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective December 31, 2011. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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 12, 2011.

Residential Tenancy Branch