

DECISION

Dispute Codes:

CNC

Introduction

This Hearing dealt with the Tenant's application cancel a *One Month Notice to End Tenancy for Cause* (the Notice) issued October 17, 2011.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenant served the Landlord with the Notice of Hearing documents by handing the documents to the Landlord's agent at the Landlord's office on October 25, 2011.

Issue to be Decided

Should the Notice issued October 17, be cancelled?

Background and Evidence

A copy of the Notice, which was served on the Tenant on October 17, 2011, was provided in evidence. The Notice indicates the following reason for ending the tenancy:

- The Tenant or a 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's agent testified that the Notice was issued because of the Tenant's physical violence toward another occupant in the rental property ("Lisa"). She stated that on October 16, 2011, the Tenant had pushed Lisa down to the ground causing her to hit her head on a wall after an altercation in the hallway at the rental property. The Landlord's agent stated that the incident had been captured on video camera.

The Landlord's agent testified that the video showed that Lisa was loud and aggressive towards the Tenant and had made inappropriate comments towards him. She stated that Lisa was intoxicated at the time and that she had a history of being intoxicated while in the common areas of the rental property and engaging in loud altercations with other occupants. The Landlord stated however that there was zero tolerance for violence in the rental property and therefore she had no choice but to issue the Notice against the Tenant.

The Landlord's agent testified that she is willing to transfer the Tenant to another building in the rental property.

The Tenant stated that he enjoys living in his home and does not wish to move. He stated that on October 16, 2011, Lisa interrupted him while he was talking to a friend in the hallway and used vulgar language, telling him to get out of the hallway. The Tenant testified that Lisa followed him down the hallway towards his room, goading him to "take this outside and fight". The Tenant testified that he went into his room and closed his door, but that Lisa banged on his door, calling him a homophobic name. The Tenant stated that he lost his temper and pushed her, but that she may have fallen because she was drunk rather than because he pushed her hard. He stated that her head did not hit the wall.

Analysis

In an application such as this, where the Tenant seeks to cancel a Notice to End Tenancy for Cause, the burden is on the Landlord to establish that the tenancy should end for the reasons provided in the Notice.

Based on the testimony of both parties, I find that the Landlord has not established that the tenancy should end for the reason provided in the Notice. It is undisputed that Lisa verbally assaulted the Tenant and then followed him to his room, banging on his door, and verbally assaulted him again.

I find that Lisa shares some blame in the events that followed, by provoking the Tenant with unacceptable language and outrageous behaviour. It appears from the evidence that Lisa invited the Tenant to engage in a physical altercation.

The Landlord's agent testified that she was attempting to find the Tenant housing in a different building, which indicates that she is not concerned about the Tenant's behaviour except with respect to this one incident. I do not find that this one occurrence is sufficient reason to end the tenancy.

I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is warned that if he becomes physically aggressive again and another Notice to End Tenancy is issued, the record of these events could form part of the Landlord's case should it come before a dispute resolution officer for consideration.

Conclusion

The Notice to End Tenancy issued October 17, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of 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: November 09, 2011.

Residential Tenancy Branch