



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 31, 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 Landlord received the Notice of Hearing documents and copies of the Tenant's documentary evidence on November 7, 2011.

The Landlord provided documentary evidence to the Residential Tenancy Branch on November 21, 2011, which the Landlord's agent testified were posted to the Tenant's door on November 21, 2011. Documents posted to a door are deemed to be received 3 days after posting and therefore the documents were not considered as they were not provided to the Branch or the Tenant within the required time lines set out in the Rule 3.5 of the Residential Tenancy Branch Rules of Procedure. I invited the Landlord's agent to provide verbal testimony with respect to the excluded documents.

Issue to be Decided

Should the Notice issued October 31, 2011, be cancelled?

Background and Evidence

The Landlord's agent BM ("BM") testified the Notice was posted on the Tenant's door on October 31, 2011.

BM testified that this is the second Notice to End Tenancy for Cause that has been issued to the Tenant. The first Notice to End Tenancy was issued in July, 2011, due to two complaints that the Landlord had received from other occupants in the rental unit regarding incidents that occurred the week of June 12, 2011, and on June 5, 2011.

BM testified that Tenant and two guests of the Tenant's woke him up at around midnight on July 3, 2011, by making loud noises outside the front door of rental property. BM read in the two letters of complaint from occupants in suites 208 and 110, dated July 3 and July 4, 2011.

BM testified that after issuing the first Notice to End Tenancy, the owner of the rental property and the Landlord's agent, BS, talked to the Tenant and decided to give him a second chance.

BM testified that a new complaint was lodged on October 29, 2011, by the occupant in suite 208. BM read the letter of complaint in his testimony. He stated that the complainant wrote that the Tenant was playing loud music at 5:30 p.m. on October 27, 2011, so he went down to see the Tenant and asked him to turn it down. The complainant also wrote that the Tenant said he had no complaints from anyone else but that they should respect each other, so he turned his music down. The complainant wrote that he went back to his apartment and after a few minutes the Tenant turned his music up again and drowned out the sound of his television.

In addition, BM alleged that a guest allowed on the rental property by the Tenant (one of the same guests who had disturbed him in July, 2011) had caused a disturbance and made a rude hand gesture to the agent's wife. The Landlord's agent stated that he had no choice but to issue another Notice to End Tenancy.

The Tenant acknowledged receiving the Notice on October 31, 2011.

The Tenant testified that the building is not very soundproof and that he can often hear the occupant in 208 walking heavily and slamming doors. The Tenant testified that his neighbour in 110 had a party the day after Canada Day. The Tenant testified that he has not complained to the Landlord and he feels the Landlord listens to just one side of a story and issues a Notice to End Tenancy based on that person's complaint. The Tenant stated that since his neighbour in 110 complained in June, 2011, he has talked to his neighbour in 110 and that they have worked it out amicably between themselves with respect to playing music. The Tenant provided a letter from the occupant in 110 in evidence, which states:

"In the 3 months or so since I made a formal complaint about the noise in apt. 108, [the Tenant] has not made any noise I would consider "disruptive" and has shown me nothing but courteous and generally great "neighbourly" behavior."

The Tenant provided a letter of apology from the guest who made the rude hand gesture. The Tenant stated that the Landlord was mistaken about the guest's identity

and that it was a different person from the one who the Landlord's agent alleges disturbed him on July 3, 2011. The Tenant stated that he realizes he is aware that he is responsible for his guest's behavior and he will ensure that it does not happen again.

Analysis

In a situation where a tenant applies to cancel a Notice to End Tenancy for Cause, the onus is on the Landlord to prove, on the balance of probabilities, that the tenancy should end for the reasons noted on the Notice to End Tenancy.

In this case, the Notice indicates that the Landlord seeks to end the tenancy because the Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Landlord issued a Notice to End Tenancy in July, but after discussing the situation with the Tenant, decided not to attempt to enforce the Notice. In October, the Landlord issued another Notice to End Tenancy based on a complaint by one of the same complainants and the behavior of a guest of the Tenant's.

Based on the testimony of both parties and the Tenant's guest's letter of apology, I am satisfied that the Tenant's guest did disturb the Landlord's agent and his wife. However, I do not find this one incident sufficient to end the tenancy.

The Tenant testified that he often hears the occupant in 208's footsteps and other noise, however, this Hearing is not about the other occupant's behavior, it is about the Tenant's behavior and whether or not there is sufficient cause to end his tenancy. I find that the Landlord has not provided sufficient cause to end the tenancy based on the testimony provided. For example, there was no evidence that the Landlord's agent investigated the other occupant's complaint at the time it was occurring to see if the allegations were well-founded. However the Tenant is strongly cautioned that he has been warned and that any further allegations of disturbance by the Tenant or his guests may be investigated by the Landlord and, if found to be substantiated, could lead to an end to his 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.

Conclusion

The Notice to End Tenancy issued October 31, 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 25, 2011.

Residential Tenancy Branch