



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 seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, his advocate, the landlord's agent and witness.

During the hearing, the landlord's agent did not verbally requested an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on April 1, 2011 as a 6 month fixed term that converted to a month to month tenancy on October 1, 2011 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid on April 1, 2011.

A copy of a 1 Month Notice to End Tenancy for Cause was submitted into evidence. The Notice was issued on December 7, 2011 with an effective date of January 31, 2012 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's agent testified the tenant had caused some disturbances for the occupant in the unit above this tenant in July and August 2011 but that she had been working with the tenant on a regular basis for some period of time and she felt the tenant was no longer causing a problem so she did not issue a notice to end tenancy.

The agent testified that she had had many discussions with the tenant about the disturbing behaviour and what it would mean should he continue to disturb the upstairs occupant. The landlord's witness testified to overhearing these discussions in the office that she shares with the agent. The witness could not specifically recall if there was discussion about ending the tenancy.

The landlord's agent further testified that upon receipt of a letter from the strata manager dated October 3, 2011 asking the landlord to evict the tenant noting the reasons for the notice are "that there have been a few incidents with the tenant and the owner above him... In short, the lady in [unit number] is afraid of the person in [dispute address]." she issued a Notice to End Tenancy.

The agent stated she had issued a 1 Month Notice to End Tenancy for Cause dated November 15, 2011 with an effective date of December 31, 2011 for which the tenant disputed the notice and was granted authority to cancel that notice in a hearing on December 7, 2011.

The landlord stated that she had indicated on that notice a wrong reason as the cause to end the tenancy and as such, when she was made aware that the original notice would be cancelled she issued a new Notice on December 7, 2011 (as described above).

From a letter submitted by the landlord, attributed to an occupant in the residential property and dated October 21, 2011 the complaints against the tenant involve events beginning on May 31, 2011 and continuing, primarily, until August 2011. In addition the letter states: "Since Sept 2011 the deck activity is done due to weather, but on a regular basis after 10 p.m. he is shaking the wall and floor enough to awaken me and keep me up due to this disturbing noise." The letter goes on to state: "Due to the nature of his watching me and aggressive behaviour I am requesting he be removed from this suite."

In another letter from the strata manager dated November 24, 2011, the manager states the occupant of the unit above this tenant has complained about noise, walls vibrating and harassment and that the tenant has complained about being disturbed by the occupant above him for "heavy walking" and watering her plants on her balcony that drips onto his balcony.

The tenant acknowledges that he has had some interactions with the occupant above him that he could have handled in a better way, however he asserts that he was unaware of that the landlord had concerns about any disturbances he may have been causing until he received the notice to end tenancy.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

The burden is on the landlord to provide sufficient evidence to establish the cause cited to end the tenancy is sufficiently significant to justify ending the tenancy. The landlord must also provide sufficient evidence to establish that the tenant was well aware of the disturbances and the potential impact of any continued disturbing behaviours. And finally, the landlord must have dealt with the issues in a timely and appropriate manner.

I accept from the testimony of both parties that the tenant and the occupant from the unit above him had some altercations over the summer months of 2011. I also accept, based on the testimony of the landlord's agent and her witness and despite the absence of any written warnings that the tenant was aware of the complaints and the potential impact on his tenancy.

As to the complaints about the tenant, from the letter of the occupant above him, specific dates were provided with the majority of them in June 2011 about noise; in August 2011 regarding the tenant "starting to show up outside when would leave early for work..."; and September 2011 for "shaking the wall and floor", I find the complaints to be too vague and do not clearly outline a *significant* disturbances to the other occupant.

From the testimony of the landlord, I also accept the tenant has modified his behaviour in a manner that has resulted in no recent complaints from the occupant above. As such, I find that no new incident has occurred of sufficient significance to cause an end to the tenancy.

I find that the only reason the landlord's agent issued the notice (both the canceled notice of November 15, 2011 and its subsequent replacement notice of December 7, 2011) was because of the request from the strata to do so and not on any recent events that were causing disturbances.

As such, I find the landlord has failed to provide sufficient evidence that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Conclusion

For the reasons noted above, I grant the tenant's Application; cancel the 1 Month Notice to End Tenancy for Cause issued on December 7, 2011 and find the tenancy remains in full force and effect.

However, I caution the tenant that as he is now aware of how seriously the landlord takes this situation he should consider himself sufficiently warned that any future disturbances including any breaches of any applicable municipal or strata noise bylaws, regardless of their severity, may provide the landlord with sufficient cause to end the tenancy.

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: January 04, 2012.

Residential Tenancy Branch