



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause and money owed or compensation for damage or loss.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began July 10, 2011 with monthly rent of \$1350.00 and the tenants paid a security deposit of \$675.00 and a pet damage deposit of \$675.00.

On December 12, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

The tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- put the landlord's property at significant risk.

The tenant testified at the start of the hearing that the issues the landlord brings forward in this hearing have already been dealt with and dismissed in prior hearings. The tenant expressed that the landlord should not be allowed to use this same evidence for a notice that was issued well after any of the incidents the landlord claims to have happen actually took place. The tenant stated that the landlord has not advised him of any incidents related to this most recent notice.

The landlord testified that he had submitted this evidence to show the history of problems associated with this tenancy. The landlord stated that this continued pattern of

bad behaviour by the tenant has left staff very afraid of the tenant and staff no longer want to have to go through dealing with this behaviour or have contact with the tenant.

The landlord stated that the tenant in November 2011 had been found to be throwing a knife against the back of his apartment door and that the police had attended to see what was happening as other tenants thought the loud bangs were gunshots. The landlord stated that in November 2011 the tenant physically pushed and bumped a staff member and in the past has put up signs referring to the landlord as Nazis.

The landlord stated that the tenant had threatened some teenagers with a baseball bat in October 2011 and in November 2011 the tenant called the landlord and abusive and swearing at the landlord on the phone. The landlord stated that there have been so many incidents in relation to this tenancy that it is over whelming. The landlord did state that since issuance of the December 12, 2011 that the tenant has not been disruptive.

The tenant stated that all of the landlord's allegations were untrue with the exception of throwing darts at a dart board on the door of his apartment which he realises was not an appropriate thing to do. The tenant maintained that staff do not have issues with him nor are staff afraid of him.

The tenant stated that the landlord giving him repeated notices was affecting his mental state and putting him in jeopardy for having an episode.

Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

The onus or burden of proof is on the party making the claim and in this case the landlord has claimed there is cause to end this tenancy and the tenant does not agree. The landlord must prove he has cause to end this tenancy and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has failed in his burden of proving he has cause to end this tenancy. The landlord has provided extensive documentation regarding this tenancy however the issues that the landlord brings forward in this hearing have been address in previous hearings and **the landlord has not brought any new evidence forward that directly relates to and upholds the December 12, 2011 notice to end tenancy for cause.**

It is acknowledged that the landlord refers to numerous issues in relation to this tenancy however this hearing is in response to the December 12, 2011 notice and the only matter being brought forward since the issuance of this notice is the tenant posting two unauthorized documents on the bulletin board and that is not enough for which to end a tenancy. Overall I am not satisfied that the landlord has presented sufficient evidence to end this tenancy on the grounds stated.

The tenant must understand however that while the landlord has not been successful in having the notice to end tenancy for cause upheld, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

In regards to the tenant's claim for money owed or compensation for damage or loss and the landlord's actions affecting his health, I find that the tenant has failed in his burden of proving that he is entitled to compensation.

The tenant has not submitted tangible evidence of how the landlord's actions are or may affect him and no evidence of how his current health is being affected by the landlord's actions. This portion of the tenant's application is therefore dismissed without leave to reapply.

Conclusion

I allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated December 12, 2011 with the result that the tenancy continues uninterrupted.

The tenant's application for compensation is dismissed without leave to reapply.

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 18, 2012

Residential Tenancy Branch