



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC

Introduction

This hearing was convened by way of conference call concerning the tenant's application disputing an additional rent increase and for an order cancelling a notice to end tenancy for cause. The tenant and an agent for the landlord company attended the conference call hearing and both parties called witnesses. The parties also provided evidence in advance of the hearing, however the landlord's evidence was not provided to the tenant and was not received by the Residential Tenancy Branch within the time provided under the Act. All evidence and testimony provided have been reviewed and are considered in this Decision with the exception of the landlord's late evidence.

During the course of the hearing, the tenant withdrew the portion of the application disputing an additional rent increase.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

This tenancy began on November 1, 2010, and the tenant still resides in the rental unit. Rent in the amount of \$834.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$400.00. The rental unit is a one bedroom apartment in a building that houses approximately 78 apartment suites.

The landlord's first witness is an employee of the landlord company and testified that the first meeting with the tenant upon commencement of the witness' employment the tenant was demanding keys stating that the tenant forgot the keys at work. The witness could not give the tenant keys without any identification and the witness did not know the tenant. The tenant screamed at the witness, was verbally abusive and was leaning over the witness' desk. When the tenant left, another person was at the entrance intercom and the tenant screamed obscenities into the intercom.

The witness also testified to receiving a number of complaints about the tenant's verbal abuse, and workers have complained that the tenant storms up and down corridors of the building yelling at workers and telling them that what they're doing is illegal, and screaming that they can't work during the day. The tenant also took pictures of another worker on a balcony, yelling obscenities, and the worker told the tenant that being on the balcony was not safe because the tenant's balcony was below the one the worker was repairing, but the tenant wouldn't leave.

A 1 Month Notice to End Tenancy for Cause was issued and served on the tenant by serving the tenant's room-mate personally on January 5, 2012. A copy of the notice was provided in advance of the hearing, and it is dated January 5, 2012 and contains an expected date of vacancy of February 29, 2012. The notice names the tenant and the tenant's room-mate and states that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and has put the landlord's property at significant risk.

When questioned about speaking to the tenant or providing the tenant with written notice of any complaints, the witness stated that nothing was put into writing, nor was the tenant told that the tenant's behaviour was inappropriate or that the tenant's behaviour could not be tolerated.

Another witness of the landlord is also an employee of the landlord company, and testified to working on a suite on the main floor of the apartment building. The witness had been cleaning and was washing the sliding glass doors of the unit and looked up to see the tenant looking directly at the witness, and the tenant screamed, "What are you looking at?" The witness knew who the tenant was and the verbal attack was unprovoked; the witness had been in prayer at that moment. The tenant obviously had something on the mind because the tenant came charging at the witness.

The witness also testified to preparing a letter dated January 13, 2012 addressed to the landlord company that states that the tenant makes it difficult to do work on the building. The workers have to be very quiet and don't know if they will be verbally attacked by the tenant, then they have to stop work and call the office.

Another witness of the landlord, another tenant of the building testified to living above the main entrance and stated that the tenant has been a problem since moving in by using foul language, being inebriated and having fights with the spouse which involved screaming and throwing the spouse's belongings over the balcony. The witness also testified that the witness saw the tenant slam a door against a retaining wall. The witness told the tenant that it would be damaging, to which the tenant responded with

foul language and threatened to have another person “get” the witness. The witness also testified that the tenant tells other tenants to get out of the way, and any dealings with the tenant are met with no reasoning. Other tenants had also mentioned disturbances.

The tenant admitted to drinking alcohol once in awhile, but has been under a lot of stress; the building is being renovated causing shaking in the building for up to 6 hours and there is a big problem with asbestos, however the tenant did not elaborate. The tenant also stated that a sign has been erected at the front of the building a few months ago offering units for rent at \$1,080.00. The tenant feels the landlord wants the tenant to move out so that rent can be raised for a new tenant. Several tenants were evicted from the building for that reason, some of whom received 2 month’s notice for landlord’s use of the property. Further, the building is presently listed for sale, and higher rents will have a better attraction to perspective purchasers.

The tenant also testified that a worker was on the 3rd floor balcony throwing building materials onto the ground, such as cupboards, plywood and garbage. The tenant did not feel that was safe nor appropriate and told the worker so. There is no building manager in the building so there was no one to complain to. The tenant did speak to the landlord who told the tenant that the tenant was disturbing the work and didn’t care about the safety aspect.

The tenant’s witness is the room-mate or spouse of the tenant, and testified that a neighbour had shown the witness a notice to end tenancy served on the neighbour. The tenant saw the landlord’s workers change the locks without obtaining a Writ of Possession. The neighbour moved out.

Analysis

A landlord has a responsibility to ensure that all tenants are provided with their right to unreasonable disturbances and quiet enjoyment of their rental units. In the event that a tenant causes disturbances, the landlord has a responsibility to notify that tenant of what the disturbance was, and that the disturbances, if continued, may result in the issuance of a notice to end the tenancy for cause. That did not happen in this case; the landlord did not speak to the tenant, nor did the landlord issue any letters or notices to advise the tenant of an imminent service of a 1 Month Notice to End Tenancy for Cause. I accept the testimony of the landlord’s witnesses that the tenant has sworn at them or in their presence, and I accept the testimony of the tenant that the work

practices were not safe and the tenant felt a need to let the workers know that. The tenant did not find an acceptable method of dealing with the situation, however the tenant could not speak to a manager within the building because none was there. The tenant did speak to the landlord who didn't seem to care and simply advised the tenant that the tenant was disturbing the work of the landlord's employees.

The tenant is hereby ordered to refrain from yelling, screaming or uttering foul language to any employees of the landlord company or to any tenants or guests of tenants on the residential property. If the tenant fails to comply with this order, the landlord will be at liberty to issue written notice to the tenant that such behaviour cannot be tolerated by the landlord. The tenant could also be served with another notice to end the tenancy for cause, and the landlord would be at liberty to apply for an Order of Possession.

The notice to end tenancy issued by the landlord was issued to both the tenant and the tenant's room-mate, however the room-mate has not applied to cancel the notice. During the course of the hearing, the landlord's agent stated that the landlord did not intend to show cause as against the room-mate.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

I further order the tenant to refrain from yelling, screaming or uttering foul language to any employees of the landlord company or to any tenants or guests of tenants on the residential property.

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 19, 2012.

Residential Tenancy Branch