



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in repose to the tenants Application for Dispute Resolution to cancel the One Month Notice to End Tenancy for cause.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issues(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both Parties agree that this month to month tenancy started on May 15, 2011. The rent for this unit is \$650.00 per month and is due on the first of the month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy by posting it to the tenant's door on October 12, 2011. This Notice becomes effective on November 30, 2011. The Notice gave the following reasons to end the tenancy:

The tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

- adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,

The manager testifies that they received a call from another tenant about the smell of marijuana coming from the tenants unit on October 16, 2011. The manager states he went to investigate and could also smell marijuana from the tenants unit. The manager states he knocked on the tenant's door and another tenant residing in the building who is a friend of this tenant opened the door and told him the tenant was not at home but would be back later. The manager states he did not address the smell of marijuana with this friend of the tenants. The manager testifies that they have zero tolerance for any drug use on the property. He states he called the police and was advised to follow eviction procedures.

The manager testifies that the tenant was then served with the One Month Notice to End Tenancy. The tenant disputed this Notice. The manager states the landlord decided to give the tenant another chance if he signed an agreement with them not to smoke marijuana on the property for the tenant and his guests. The agreement also states the landlords have directed the manager to drop the arbitration only if the following conditions are met and the manager needs confirmation from the Residential Tenancy Branch that it is dropped. If there is a breach of these conditions it will force the landlords to re-instate an eviction Notice.

The manager testifies he has no evidence that the tenant has smoked marijuana after this agreement was signed but as he did not cancel this hearing he has breached the agreement and therefore the eviction notice has been reinstated.

The landlord also states the tenants own hand written letter confirms he smokes marijuana as it states "no one smokes in his apartment; it is outside or for a walk."

The manager testifies that the tenant has a threatening manner when speaking to other staff members. On one occasion he telephoned the office and spoke to a staff member demanding to speak to the landlords. When the staff member told the tenant the landlords were not available the tenant said he would have to come down to the office to deal with this. The landlord states the staff member in question perceived a threat from the tenant and felt it necessary to lock the office doors. This staff member also called the police and reported this incident to them. A police file number has been included in evidence.

The manager testifies when he went to the tenants unit to measure for new carpets as ordered at a previous Dispute Resolution Hearing the tenant would not allow the manager to enter his unit at first and said he had to keep an eye on him. He did then allow entry to the manager and to the carpet fitter but as the tenants tone was aggressive the carpets could not be measured at that time and the manager and carpet fitter left the unit.

The property manager states they have been trying to comply with the previous Order regarding the carpets however the tenant has interfered with the managers and is unable to interact with them

The manager testifies that the tenant also threatened an 11 year old boy and swore at him over an incident with the boy's dog. The landlord has included a letter from this boy's mother in evidence.

The landlord testifies the tenant has made derogatory comments about the landlords on his Facebook page. The manager testifies they were shown these comments by another tenant who was a friend added to this tenants Facebook. The landlords have provided a copy of these comments in evidence and claim these comments should not have been made on a public site such as this.

The landlord seeks an Order of Possession to take effect at 1.00p.m. on November 30, 2011 if the Notice to End Tenancy is upheld.

The tenant disputes the landlords claim. The tenant testifies that he or his guests have never smoked drugs of any kind in his unit or on the landlord's property. The tenant testifies that he does not smoke marijuana and in his hand written letter the landlord refers to the tenant was talking about cigarette smoking and not marijuana. The tenant states he signed the agreement with the landlord to agree that no one would ever do drugs or smoke marijuana in his unit as he does not smoke this and would not allow anyone else to smoke it in his unit. Therefore the tenant states this was an easy agreement to sign.

The tenant testifies that he could not cancel his application for Dispute Resolution as in doing so he would have violated his rights if the landlord tried to enforce the Notice and would leave him open to an eviction from the landlord.

The tenant testifies that the landlords witness statement from the tenant who complained about smelling marijuana states she only believes the smell was coming from his unit. The tenant states this is purely speculation on the part of this witness. The tenant states the last time the witness said she had smelt it was on October 11, 2011, days before he signed this agreement with the landlord.

The tenant disputes that he has been aggressive towards a member of the landlord's staff he states he was upset when he telephoned her but did not threaten her in any way. The tenant states he later called the police himself and found there had been no incidents concerning him reported to them.

The tenant states there was an incident concerning a neighbor's son and his dog however he denies swearing at the boy but agrees he did swear at the dog.

The tenant states he was not aggressive towards the manager or his carpet fitter when they called to measure for carpets. The tenant states he did not want to allow access to the manager as he had previously entered his unit without permission.

The tenants witness testifies that she was present when the manager and his carpet fitter came to the tenants unit. The witness testifies that she did hear the tenant tell the carpet fitter

that the manager was not welcome and they did not measure for carpets. The witness states after the tenant told the manager that he would have to keep an eye on him the carpet fitter told the tenant that he did not have to deal with a kid like him and then told the tenant that the manager would never enter a tenants unit without permission as he had known him for a long time.

The landlord declines to cross exam this witness.

The tenant testifies his Facebook site is not a public site and the landlords had no right to try to access this. He states any comments are made for his friends' who are invited onto the site and are not open to the landlord or the public.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have taken into account each Parties argument and find the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy for cause based on the reasons given on the Notice. The landlord has not shown how the tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord and has not provided sufficient evidence to meet the burden of proof that the tenant or his guests have smoked marijuana in his unit or on the property.

Furthermore I am not satisfied that the landlords have met the burden of proof that the tenant actually threatened a member of staff and that the tenants words were not just perceived to be a threat. The landlord witness statement from the boy's mother that the tenant allegedly threatened is not sufficient evidence as they did not call this witness to give sworn testimony or

submit to cross examination and as she did not see the incident herself it is deemed to be third hand evidence.

I am also not satisfied that the landlord has met the burden of proof that the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated October 12, 2011 is cancelled and the tenancy will continue.

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