



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 pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord entered into written evidence a copy of a statement from one of the landlord's employees stating that at 3:30 p.m. on January 31, 2012, the landlord's employee handed the tenant the 1 Month Notice. The landlord's agent gave sworn testimony confirming his written statement that he was present when the tenant was handed the 1 Month Notice on January 31, 2012. The tenant entered oral and written evidence confirming that he received the 1 Month Notice, but that he found it under his door on February 6, 2012. At the hearing, the landlord's agent agreed to not dispute the tenant's claim that he did not get served the 1 Month Notice until February 6, 2012. The parties agreed that the effective date of the 1 Month Notice would be corrected to March 31, 2012, instead of February 29, 2012, as set out on that Notice.

The tenant's advocate gave sworn testimony that she sent the landlord a copy of the tenant's dispute resolution hearing package by registered mail on February 8, 2012. She provided the Canada Post Tracking Number to confirm this mailing. The landlord's agent confirmed that the landlord received the tenant's dispute resolution hearing package by registered mail. I am satisfied that all of the above documents were served to one another in accordance with the *Act*.

At the hearing, the landlord's agent requested an end to this tenancy and an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy commenced originally as a one-year fixed term tenancy on May 1, 2009. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent is now set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$387.50 security deposit paid on or about May 1, 2009.

The landlord entered into written evidence a copy of 1 Month Notice requiring the tenant to end this tenancy by February 29, 2012, corrected to March 31, 2012. The Notice cited the following reasons for the issuance of the Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by 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.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord...*

At the hearing, the landlord's representative JDG (the landlord) reviewed the incidents that led to the landlord's issuance of the 1 Month Notice, all of which were set out in the landlord's written submission. The landlord confirmed that no written notices or warnings have been provided to the tenant prior to the issuance of the 1 Month Notice to the tenant. He said that until a few days before the hearing, he had witnesses from the building who were intending to give oral testimony attesting to the disruption caused by the tenant to other occupants of the building. None of these individuals participated in this hearing, nor did the landlord enter into written evidence any letters of complaint from them. Most of the landlord's examples of disturbing behaviour exhibited by the tenant involved allegations that the tenant was loud and disturbing when he was intoxicated. The landlord testified that this was often the case.

The tenant and his advocate denied that the tenant's behaviours disturbed others or that the tenant had been given sufficient warning regarding the behaviours that had prompted the landlord's 1 Month Notice. The tenant asserted that the real reason for the landlord's issuance of the 1 Month Notice was that he was no longer doing work as a painter for the landlord in other properties that the landlord owned.

Analysis

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the *Criminal Code*. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the Dispute Resolution Officer and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The only evidence that the landlord provided with respect to the alleged illegal activity displayed by the tenant was during a domestic dispute between the tenant and his then wife. The landlord entered oral and written evidence that the tenant was arrested and removed from the premises along with his wife on August 11, 2011. Although the tenant confirmed that he and his wife were arrested and removed from the building during a domestic dispute, he said that this incident occurred in 2009. He testified that he has not seen his wife since that time. The landlord did not dispute the tenant's correction of the date of this incident.

I find that this single incident which occurred many months if not several years ago provided insufficient evidence of illegal activity to form the basis for the end to this tenancy.

I find that the landlord did not provide sufficient evidence regarding the allegation that the tenant had allowed an unreasonable number of occupants into his rental unit.

The landlord's claims with respect to the noise and disturbance caused at times by the tenant, often as a result of his consumption of alcoholic beverages, were based on the landlord's direct observations of the tenant's behaviours. Some of these incidents dated back to December 2008. The only relatively recent incident cited by the landlord related to circumstances that occurred on January 21, 2012 with respect to the tenant's inability to open the lock to his door due to alleged inebriation.

I find that the landlord has failed to provide any evidence that would demonstrate that he has issued written notices or warnings to the tenant with respect to his behaviour and regarding the potential consequences that could arise if he does not modify his behaviour. The only evidence claiming that the tenant has interfered with other occupants or the landlord comes from the landlord's representative who attended this hearing. The landlord did not provide any written statements or oral testimony from anyone else in this building expressing the types of concerns identified by the landlord as the grounds for seeking an end to this tenancy for cause.

Overall, I find there was insufficient evidence from the landlord to allow me to find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

For the above reasons, I find that the landlord has failed to demonstrate that there were sufficient grounds for issuing the 1 Month Notice.

Conclusion

The tenant's application is allowed. The 1 Month Notice is set aside with the effect that this tenancy shall continue. As the tenant's application was successful, there is no need to consider the landlord's oral request for an Order of Possession.

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: February 24, 2012

Residential Tenancy Branch