



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNR, MNDC, ERP, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 1 Month Notice to End Tenancy for Cause; a Monetary Order for cost of emergency repairs, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to order the landlord to make emergency repairs for health or safety reasons; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

It is my decision that I will not deal with all the dispute issues that the tenant has placed on his application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request to set aside, or cancel the landlord's Notice to End Tenancy for Cause, and I dismiss the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be set aside, and should the tenancy continue?

Background and Evidence

The rental unit consists of. Pursuant to a written agreement, the month to month tenancy started on April 7, 2011. The rent is \$625.00 per month and the tenant paid a security deposit of \$312.50.

The landlord submitted a significant amount of documentary evidence concerning this matter, which summarizes a series of events and incidents between March 19th, 2011, and February 13th, 2012. These events were chronologically tabbed in a four page summary.

This hearing lasted nearly 90 minutes; therefore I will also summarize the salient portions of the evidence as follows:

The landlord testified that problems with the tenant started on June 27th, 2011, when the resident manager heard loud music and had to tell the tenant to keep the music down. The landlord said that the tenant became belligerent and argumentative. The resident manger, J.D., testified that the tenant was insistent on knowing who made the complaint. She said that because of the manner in which she had been treated, the landlord directed her to no longer have any direct contact with the tenant. Following this incident, the landlord said that he issued the tenant a warning letter which the tenant took to arbitration. The landlord said that he rescinded the warning letter before it went to a hearing in the hopes of diffusing the tensions and restoring a peaceful relationship.

J.D said that she also received complaints that the tenant kept watching another occupant that made that occupant feel very uncomfortable. She said that another elderly occupant made four written complaints of noise, such as continual stomping, dated August 10th, 2011, November 30th, 2011, January 9th and 17th, 2012. She stated that she could also hear noise coming from the tenant's suite. J.D said that on January 30th, 2012, she also received a complaint of screaming and yelling from a third occupant across the hall.

The landlord stated that he received a complaint letter on October 28th, 2011 from an occupant that the tenant was banging on the bedroom wall, that the tenant was asked to stop, and that instead the banging continued, only louder. That same occupant informed the landlord on December 2, 2011 that she was changing parking spots to avoid been watched or having contact with the tenant. The landlord stated that he now receives continuous emails from the tenant concerning issues with the building, which becomes excessive and harassing. He said that on June 29th, 2011, the tenant called the resident manager 5 times between midnight and 1AM about the noise from another occupant.

The tenant testified that the resident manager's testimony is not credible because she had been found lying about the condition of the unit when he moved in. He stated that none of the complaints were corroborated by third party witnesses. Concerning the elderly occupant, the tenant said that he was aware that she was sensitive to noise, and that she would complain about using his hot water, the stove fan, or even when an occupant snores too loud.

The tenant stated that he received three warning letters, and that the landlord's decision to rescind the first one confirms that it was not substantiated. He said that the November 30th, 2011 warning letter addresses loud music, but that the complaint is petty and lacks evidence; and that the January 23rd, 2012 warning letter lacks specifics. He said that the resident manager tried to solicit a petition against him from other occupants that he does not even know.

The tenant agreed that he made several complaints to the landlord as is his right. When asked about a series of email requests sent to the landlord between November 16th, 2011 and January 24th, 2012, the tenant said that the landlord refused to answer, and asked at the hearing how else could he get an answer? He said that he called about 5 times about another occupant making noise in the hallway, because he needs to somehow have an ability to express his concerns.

Concerning the occupant felling uncomfortable being watched, he said that she triggers her car alarm every morning at 5:30 AM, and that he has a right to get up and see where the noise comes from. He said that he took photographs to show that the tenant has switched parking spaces, and that his investigative endeavours are justified, as this occupant was granted special privileges by the resident manager.

The landlord concluded by submitting that he was not present for all the incidents, but that despite the “he-said-she-said” between the parties, the third occupant’s complaint letter of January 30th, 2012 concerning screaming and offensive language confirmed in his mind that the occupants’ complaints were founded.

Analysis

The landlord bears the burden to prove the grounds to end the tenancy. The landlord’s notice to end tenancy gave for reasons that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. Disturbance is not limited to only a noise level. The tenant acknowledged the repeated emails, calling the landlord 5 times over one incident, his perceived rights to investigate, to take photographs, and to expect answers. The tenant relies on the fact that with the exception of one incident, no weight should be given on complaints that are not corroborated by an independent witness. I find on the evidence that the landlord proved, on a balance of probabilities, that the tenant significantly interfered with or unreasonably disturbed another occupant and the landlord. I accept that the tenant’s tenacious requests through email correspondence were excessive and that his investigative endeavours were inappropriate and made other occupants uncomfortable.

Therefore I find that the landlord had sufficient grounds to serve the tenant with the notice to end tenancy. Accordingly I deny the tenant’s application to cancel the notice.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice to End Tenancy is dismissed without leave to reapply. The notice is therefore valid, and of full force and effect. The tenancy will end on the date specified on the notice. If the tenant does not comply, the landlord is at liberty to make an application 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 29, 2012.

Residential Tenancy Branch