



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 in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for an Order cancelling a Notice to End Tenancy.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

During the Hearing, the Tenant referred to evidence that was filed late for the Hearing. The Tenant states that the Landlord was served the evidence but refused to accept the evidence so placed the evidence through the slot of the Landlord’s door. The Landlord confirmed having received the evidence but states that it has not been reviewed, as it was late. The Landlord was provided time during the Hearing to review the material and was given an opportunity to respond to the evidence but declined to do so.

It should also be noted that at the onset of the Hearing, the Landlord identified a person that was to be called as a witness however following the provision of the Landlord’s evidence and argument, the Landlord declined to call that witness.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the Notice to End Tenancy?

Background and Evidence

The tenancy started in 2003. On January 24, 2012, the Landlord served the Tenant with a Notice to End Tenancy for Cause (the "Notice") by posting the Notice on the door. The Notice lists the following cause:

- 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 Landlord states that the Tenant's son, a young teenager, has been bullying and harassing another young teenager and that such behavior will not be tolerated. The Landlord provided copies of three memos that were sent to the Tenant in relation to the activities complained of and that form the substance of the claim.

The first memo dated November 28, 2011 refers to events from November 22, 2011 but does not set out those events and includes a statement that the Tenant's son is bullying other children. The second memo, dated December 1, 2011 refers to events from November 30, 2011 but does not describe those events other than implying that the Tenant's son left the unit alone. The memo warns the Tenant to look after her son.

The Landlord supplied as evidence:

- a letter dated February 13, 2012 from a resident that refers to two incidents of the Tenant's son and his friends "bugging" and "scaring" the resident's teenage son. The letter indicates that following a conversation with the Tenant, no more problems have arisen at the complex, with the exception of some name calling for which the Tenant's son apologized to the resident.
- a letter dated February 8, 2012 from another resident that describes the Tenant's son name calling other youth (teen), making the threat to another youth that "you are going to get it at school" and throwing snowballs at buildings and other children;

The third memo, dated January 24, 2012, refers to events from January 21, 2012 on which date the son threw a snowball at another person.

The Landlord supplied as evidence:

- a letter dated January 30, 2012 from a neighbour of the Tenant, the person who was hit by the “iceball” in the elbow. The letter sets out that after being hit by the “iceball” an apology was obtained from the Tenant’s son and that the elbow was sore for a while;
- an email from a witness of a young man throwing a “snowball” at the neighbour;

The Landlord states that the actions of the Tenant’s son has caused other tenants to feel unsafe.

The Landlord further states that a memo was sent to the Tenant in relation to an incident that occurred on August 24, 2011, in which a guest of the Tenant, threatened another tenant. The Landlord states that the incident was reported to the police however, no charges were laid in relation to the incident.

The Tenant states that she has spoke with her son following the two incidents involving one neighbour’s son and that the Tenant spoke with this neighbour. The Tenant states that this neighbour was not happy that the Landlord sent a memo to the Tenant about the incident. The Tenant further states that since these two incidents, the neighbour’s son has been over to the unit to help decorate for Christmas and to borrow the occasional item and disputes that the incidents involving her son and the neighbour’s son has caused anyone to fear for their safety.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to establish that the tenancy should end for the reason indicated on the Notice. In this instance, the Lanldord has the burden of establishing that the actions of the Tenant’s

son have jeopardized the health, safety or lawful right of another occupant or the Landlord. No evidence was provided, other than from the receiver of the snowball hit, that the snowball in question or even any snowball being thrown by the Tenant's son jeopardized anybody's health or safety. I do not find that a sore elbow from a snowball constitutes jeopardy to health. I find that the incident that occurred in August 2011, involving a guest of the Tenant, is an isolated incident and too remote in time to consider as evidence of cause for the Notice. While the Landlord has provided some evidence of questionable behavior of the Tenant's son, I find that this evidence does not in itself constitute evidence of jeopardy. I further find that the limited evidence of tenants' fear for the safety of themselves or their children to be insufficient to establish that the Tenant's son's behavior jeopardized or was likely to jeopardize anybody's health, safety or lawful right. Accordingly, I find that the Landlord has failed to meet the burden of proof that any of the incidents jeopardized the health, safety or lawful right of another occupant or the Landlord. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

Conclusion

The Notice to End Tenancy is cancelled and of no effect. The tenancy continues.

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 22, 2012.

Residential Tenancy Branch