



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a Notice to End Tenancy for Cause and to recover the cost of the filing fee for this application from the Landlord.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord issued and served a 1 Month Notice to End Tenancy for Cause in accordance with section 47 of the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof required to end this tenancy pursuant to section 47 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed the Tenant entered into a month to month tenancy that began on approximately August 1, 2003. Rent is payable on the first of each month and the Tenant paid \$300.00 as the security deposit. The Landlords have been Resident Managers since April 1, 2005.

The parties further agreed that a 1 Month Notice to End Tenancy (herein after referred to as the Notice), was issued and served personally to the Tenant on January 19, 2012 at 4:45 p.m. for the following reasons:

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

- Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The Landlords affirmed that back sometime in 2009 they had been advised that this Tenant was approaching other tenants and telling them that the Landlords were entering tenant's suites without permission and they were stealing from them. As a result of these stories the Landlords called a meeting with the Tenant during which the Tenant admitted to spreading the rumours. They stated that the Tenant agreed to apologise to all those involved and that she said she would not do this again. The Landlords state they told her that if she began spreading these rumours again then she would be evicted. The Landlords were not able to provide a date as to when this meeting occurred and confirmed they did not provide the Tenant any warnings in writing.

The Landlords advised that a few days prior to issuing the 1 Month Notice to End Tenancy a relatively new tenant approached them and informed them that the Tenant was spreading rumours that the Landlords were entering rental units without permission and stealing from the tenants. The Landlords canvassed written statements from tenants who had been approached and told these stories, as submitted in their evidence, and promptly issued the Tenant the 1 Month Notice of eviction.

The Landlords confirmed no written warnings have been issued to the Tenant, nor had they approached the Tenant to discuss these recent allegations prior to issuing the Notice.

The Tenant affirmed that she did not approach these other tenants; rather they approached her and started up a conversation while she was doing her laundry. She confirmed she attended the aforementioned meeting in 2009 and likened it to a kangaroo court where she felt she had no choice but to apologize. She does not recall ever being told in that meeting that she could be evicted for speaking about the Landlords entering other tenant's units.

The Tenant stated that she feels these recent complaints are a set up as she does not coward under the Landlord's intimidation. She feels this Notice is nothing more than their attempt to silence her as supported by what the Landlord said to her, "well this will shut you up", in the elevator immediately following the service of the Notice to her. She also believes they want to evict her because she is a long term tenant and all newer tenants are paying a much higher rent.

The Landlords disputed the Tenant's testimony arguing that they are not attempting to evict her to get new tenants to pay higher rent. They are simply concerned for the well being of all of their tenants and these rumours are very upsetting to other tenants causing them to worry unnecessarily. They argued that this is also detrimental to their health and welfare as they are worried about this and the building's reputation.

The Tenant responded by saying other tenants have come to her to tell them they have heard the Landlords in other people's suites when they are on holidays and she has not told people the Landlords steal, only that they enter suites without permission.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the 1 Month Notice and various complaint letters issued to the Landlords.

The 1 Month Notice to End Tenancy cited the following reasons for issuance:

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

- Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

Section 47(1) (h) of the Act provides that the landlord may end a tenancy by giving notice to end the tenancy if the tenant has not corrected a situation within a reasonable time after the **landlord gives the tenant written notice to do so.**

The parties agree that in 2009 they had a meeting whereby the Tenant apologized to other tenants and agreed not to spread rumors about the Landlords. The Landlords allege the Tenant was told that if she continued to spread rumors it would be grounds for eviction; however, the Tenant does not recall being told this.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this

case, the Landlords have the burden to prove the Tenant had been told she would be evicted if she began to spread rumors again. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the burden of proof.

In making my determination I must consider that the Tenant has never been issued a written warning informing her that she could be evicted if she does not stop giving false information about the Landlords (Building Managers) to other tenants. Furthermore I must consider that this issue was previously discussed sometime in 2009 and has not reoccurred for over two years.

Based on the above, I find that at the time of the hearing there was insufficient evidence to support the allegations that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that she seriously jeopardized the health or safety or lawful right of another occupant or the landlord to warrant ending her tenancy. Accordingly, I find that the Landlord has not succeeded in meeting the burden of proof for issuing the 1 Month Notice to End Tenancy issued on January 19, 2012, and the Notice is hereby cancelled.

The Tenant should now consider that by receipt of the aforementioned Notice and this decision, she has been given sufficient written notice to immediately stop speaking to other tenants about the Landlords alleged illegal entry and/or stealing from other tenant's suites. If the Tenant continues to discuss these matters the Landlords will have grounds to issue another 1 Month Notice to end her tenancy

Conclusion

I HEREBY CANCEL the 1 Month Notice to End Tenancy for Cause issued January 19, 2012. This Notice is of no force or effect.

The Tenant has been successful with her application and may deduct the one time award of the filing fee of **\$50.00** from her next rent payment.

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 10, 2012.

Residential Tenancy Branch