



Dispute Resolution Services

Page: 1

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 for Cause (the “Notice”).

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

Preliminary Matter

At the onset of the Hearing, the Tenant informed that evidence was supplied late and requested clarification on whether the evidence would be accepted. The Landlord confirmed receiving the late evidence and has reviewed it. The Landlord states that there are no objections to the inclusion of the evidence; therefore I find that the evidence may be accepted for consideration at this Hearing.

Issue(s) to be Decided

Is the Notice valid?

Is the Tenant entitled to a cancellation of the Notice?

Background and Evidence

The tenancy started on July 1, 2009. The Landlord states that the Tenant has been going through the dumpster, tracking mud and garbage into the building. The Landlord states that the Landlord has seen Tenant inside the bins throwing garbage out.

The Landlord referred to a warning letter sent to the Tenant dated September 24, 2009.

This letter raises problems with the Tenant “remising” through the bins, using the patio

door as an entrance and exit and walking throughout the building at “all times of the day and night”. The Landlord states that the author of this letter has since left the employ of the Landlord and states that since this letter, the Tenant has not ceased the activities until recently.

The Notice, dated February 10, 2012, with a stated effective date of March 10, 2012 (automatically corrected to March 31, 2012) was served on the Tenant and lists the following causes:

The 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; and
- Put the landlord's property at significant risk.

The Landlord submitted three letters from Tenants as evidence to substantiate the cause. It is noted that two of those letters are undated and one is dated after the Notice was served. The Landlord further states that following an inspection of the unit on February 24, 2012, the Landlord noted that the carpet in the unit is badly soiled, contains several cigarette burns and has a smoke detector that is damaged beyond repair and in need of replacement.

The Landlord argues that the activities of the Tenant bringing in items raises a health hazard as Tenant could possibly bring in bedbugs. The Landlord further argues that the smell and noises at late hours is an unreasonable disturbance to other tenants and that a number of tenants have ended their tenancies and others will end their tenancies as a result. The Landlord argues that the Tenant's activities are causing the carpet in the common area to be stained and damaged.

The Landlord states that if the Tenant has health issues, the Tenant should not be living in the unit as this is a safety issue.

The Tenant vehemently denies “dumpster diving” but agrees that the Tenant collects bottles and cans for recycling. The Tenant states that he is unable to walk well and submits evidence of significant medical disability and pending surgery. The Tenant submits that most hours are spent sleeping due to his illness and is only up about briefly two or three times a day. The Tenant states that the letter from 2009 was never received by the Tenant and argues that the word “remising” only means to “think over” or “scan over” and does not mean climbing into the bins.

The Tenant denies the allegations of the Landlord in relation to carpet stains or burns and notes that the Landlord has provided no photo evidence of such damage. The Tenant supplied witness letters in relation to the state of the Tenant’s unit and in relation to the cleaning help the Tenant provides to the management. The Tenant states that there is no move-in inspection report to support any damage in the Tenant’s unit. The Tenant submitted a written response to the Landlord’s application.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Although the Landlord states that the Tenant has been inside the garbage bins, given the medical evidence of the Tenant, I find this statement to be dubious and difficult to believe. Although the Landlord states that a written warning was provided to the Tenant in 2009, given the Tenant’s dispute that this was received and noting that the author of the letter was not called as a witness to corroborate the letter, I find that the Landlord has failed to establish that the Tenant was carrying out the activities complained of since 2009. Considering that the Landlord did not provide evidence of any further warning letter and given that the other tenants letters were undated or dated after the Notice was served, I find that the Landlord has

not substantiated that prior to the Notice, any tenants complained about the Tenant. Further noting that no corroborating evidence was provided by the Landlord of departures or pending departures of other tenants due to the Tenant's behaviour, I find that the Landlord has failed to prove on a balance of probabilities that other occupants or the Landlord have been significantly disturbed or subjected to unreasonable interference prior to the Notice being issued. I further find that the Landlord has failed to establish on a balance of probabilities that the lawful right of other occupants or the Landlord has been seriously jeopardized.

Given the lack of photo evidence of damages to the carpet or stains on the carpet leading to the Tenant's unit, I find that the Landlord has failed to substantiate that the Tenant posed a significant risk to the property or that the Tenant caused damages to the building from entering the property from outdoors, whether or not with items.

Although the Landlord claims that the Tenant poses a fire risk, considering the Landlord's evidence that the smoke alarm requires replacement, that a fire department has never been called to respond to smoke in the Tenant's unit, and considering the lack of corroborating evidence of cigarette burns to the carpet, caused by the Tenant, I find that the Landlord has failed to substantiate that the Tenant has caused significant risk to the property or safety of the Landlord or other occupants.

Accordingly, I find that the Landlord has failed to establish on a balance of probabilities sufficient cause to end the tenancy for the reasons contained in the Notice and that the Notice is therefore not valid. I find that the Tenant is entitled to a cancellation of the Notice and I Order the Notice cancelled. The Tenancy continues.

Conclusion

The Notice is cancelled and 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: March 23, 2012.

Residential Tenancy Branch