



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 the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for recovery of the filing fee.

The listed parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary Issue:

The Notice was April 1, 2012; however, the landlord's agent stated that this was an error and that it was delivered on March 1, 2012, with an effective move out date of April 1, 2012. The tenant received confirmation of delivery on or near that date.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be cancelled and are the tenants entitled to recover the filing fee?

Background and Evidence

This original 1 year, fixed term tenancy started in February 2007, continues now on a month to month basis and current monthly rent is \$976.00.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenants a 1 Month Notice to End Tenancy for Cause.

The cause as stated on the Notice alleged that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's relevant evidence included a letter dated March 1, 2012, from the landlord's agent to the tenant regarding an incident on February 28, 2012, a letter dated March 31, 2011, concerning some incidents allegedly involving the tenant on March 17 and March 30, 2011, a three page letter from another tenant in the building, which has 81 units according to the landlord, with references to incidents allegedly involving the tenant in 2008, a letter dated March 8, 2012, from another tenant, citing an issue with the tenant a few years ago, a letter from another tenant, dated March 8, 2012, citing that the tenant has glared at him and was unfriendly, a note from a helper of the landlord, citing that a year ago the tenant did not allow the landlord's agent into the rental unit, and an undated letter from another tenant citing some concerns about the behaviour of the tenant.

In support of their Notice, the landlord testified he has warned the male tenant many times about his behaviour, which he termed unacceptable.

The landlord also stated on February 28, 2012, he attempted to access the building's elevator with his wife, which he was prevented from so doing due to the tenant pushing the buttons several times. The tenant then exited and began pushing the buttons in the lobby, preventing the elevator from going up, according to the landlord's agent.

The landlord's agent cited incidents in the past about the tenant's alleged behaviour, including incidents from 2008 which led to the issuance of a 1 Month Notice to End Tenancy.

In response, the tenant stated that the issuance of the Notice involved the incident on February 28, 2012, regarding the elevator. The tenant submitted that he has claustrophobia issues and that he cannot tolerate being on the elevator with more than 2 people. When the landlord and his wife attempted to access the rental unit, the tenant submitted that he had to exit quickly due to his claustrophobia.

The tenant submitted that he did not attempt to prevent the landlord and his wife from going up in the elevator, only that he was pushing the button for the next elevator car.

The tenant submitted that he worked out earlier problems with another resident manager in 2008, and has not had any problems since then. The tenant submitted that

he keeps to himself and does not talk to fellow tenants. The tenant also submitted that he is a quiet and does not have problems with other tenants.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

Once the tenants made an Application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I was persuaded by the lack of written substantiation that the tenant had exhibited any appropriate behaviour.

I was further persuaded by the fact that at the conclusion of the testimony, I still had no clear understanding from the landlord of what type inappropriate behaviour the tenant had allegedly engaged in.

The evidence submitted by the landlord included documentation from 2008, which is too remote in time to be considered for the purposes of this hearing.

Additionally, the landlord confirmed seeking written statements from tenants well after issuance of the Notice. As these statements were well after the Notice was issued, I do not find that these statements prompted the issuance of the Notice.

Even then, some of the written complaints were from incidents in 2008, again too remote in time, or 2011, which I find too remote in time to be important for consideration of this Notice or instances of the tenant allegedly glaring at a tenant, which I find is not sufficient to end a tenancy.

Rather the letter of March 1, 2012, supports the tenant's submission that the Notice was issued as a result of the incident involving the elevator.

I do not find that the tenant exiting the elevator when the landlord's agent and his wife entered the elevator and then pushing buttons in the lobby, even if true, is sufficient cause to warrant an end a tenancy. I find that this, even if true, is not significant interference or unreasonable disturbance.

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the cause listed on the Notice.

Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, issued March 1, 2012, for an effective move out date of April 1, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. I **order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

As I have found merit with the tenants' application, I award the tenants recovery of the filing fee. I direct the tenants to withhold the amount of \$50.00 from their next or a future month's payment of rent in satisfaction of their monetary award.

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 22, 2012.

Residential Tenancy Branch