



Dispute Resolution Services

Page: 1

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 One-Month Notice to End Tenancy for Cause dated March 26, 2012, purporting to be effective April 30, 2012. Both parties appeared and each gave testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or should be cancelled as requested by the Tenant.

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act.

Background and Evidence: One-Month Notice for Cause

The tenancy began in June 2009. The current rent is set at \$825.00. The tenancy agreement specified that the rent was due on the first day of each month. A security deposit of \$412.50 was paid.

Evidence was submitted by the applicant and the respondent, including a copy of a One-Month Notice to End Tenancy for Cause, copies of communications between the parties, written testimony, records of some late rent payments, copies of receipts and a copy of the tenant's rent ledger.

The landlord testified that the tenant was chronically late in paying rent during the tenancy and has received both verbal and written warnings cautioning the tenant that rent is due on the first day of the month. The landlord also testified that the tenant had significantly interfered with and unreasonably disturbed the landlord and other tenants by yelling, using foul language and veiled threats and purposely making excessive noise.

The tenant disputed these allegations and pointed out that the rent was only late a couple of times in the recent past and that late payments shown were due to the landlord's record-keeping. The tenant denied making threats, using foul language or making excessive noise. The tenant testified that the landlord was harassing the tenants to force them to move out and that normal noise always causes the landlord's dog to bark and this disturbs the tenants.

Analysis:

In regard to the issue of repeated late payment of rent, I find that the testimony and evidence of both parties confirm that this did transpire on at least two occasions in the recent past.

Section 26 of the Act specifically requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Under section 47, repeated late payment of rent is a valid basis upon which the landlord may end the tenancy for cause.

The tenant is hereby cautioned that paying the rent late is a serious violation of both the Act and that the tenancy agreement and if repeated could result in termination of the tenancy under section 47.

With respect to the issue of noise, I also find that the Residential Tenancy Guidelines give examples of what may constitute "*significant Interference*" including serious examples of unreasonable and ongoing noise. (my emphasis)

In regard to the term, "unreasonably disturbed", Black's Law Dictionary defines "*unreasonable*" as: "Irrational; foolish; unwise; absurd; preposterous; senseless, immoderate; exorbitant; ...capricious; arbitrary; confiscatory."

In this instance I find that the tenant possibly engaged in conduct that the landlord may have found to be disruptive. However, I find that exposure to noise between units can depend upon the age and structure of the building in relation to how sound carries or what floor covering is used. The fact is that some complexes are more sound-resistant than others.

I find that the term "*unreasonable disturbance*" is a subjective determination that can widely vary from one individual to another. I note that the perception of what level of noise is "reasonable" can be influenced by the sensitivity or subjectivity of a particular occupant. Diversity in terms of lifestyle is also a factor.

With respect to the landlord's allegation that the tenant physically threatened the landlord, I find that the landlord did not offer sufficient proof of this alleged occurrence.

Given the above, I find that the One-Month Notice to End Tenancy for Cause must be cancelled, with a caution to the tenant that they must pay the rent on the first day of each month, refrain from yelling or using threats and foul language against the landlord or others and also avoid making excessive noise. Failure to comply with the above obligations may jeopardize their tenancy.

The parties are hereby ordered not to communicate directly in future and to restrict all communications to written form unless there is an emergency or it is not feasible under the particular circumstance at the time.

Conclusion

Based on the evidence and testimony, I hereby cancel the One-Month Notice to End Tenancy dated March 26, 2012. In doing so, I caution the tenant that repeated late payment of rent is clear justification under section 47 to terminate the tenancy, as is persistent confrontational conduct that could be seen as significantly interfering with the landlord or others.

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: April 19, 2012.

Residential Tenancy Branch