



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated April 30, 2012 and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenant claimed that he received the Landlord's evidence package 2 days prior to the hearing. The Tenant said he did not require an adjournment so that he could respond to the Landlord's evidence but sought to have it excluded. RTB Rule of Procedure 11.5 says that a Dispute Resolution Officer may accept late filed evidence and offer the other party on whom it was served an adjournment or the Dispute Resolution Officer may exclude the evidence. In this case, I found that the Landlord's evidence was relevant and admissible and as a result, the Tenant was offered an adjournment to give him a further opportunity to respond to it if needed. As the Tenant said he did not need an adjournment to respond to the Landlord's evidence, his application to exclude the Landlord's evidence was dismissed.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on April 1, 2012. Rent is \$850.00 per month. The rental unit is located in the basement suite of a house and the upstairs suite is rented to other tenants under a separate tenancy agreement. On April 30, 2012, the Landlord served the Tenant's adult son (who also resides in the rental unit) in person with a One Month Notice to End Tenancy for Cause. The grounds stated on the Notice were as follows:

- The Tenant or a person permitted on the property by the Tenant has:
 - o Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - o Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - o Put the Landlord's property at significant risk;

- The Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord; and
- The Tenant has caused extraordinary damage to the unit or property.

The Landlord said he has received many complaints from the tenants living in the upper suite of the rental property about the Tenants smoking cigarettes and marijuana in the rental unit, leaving a substantial amount of garbage lying in common areas of the property and making excessive noise. The Landlord said the upstairs tenants also complained to him that the Tenants have yelled, sworn and threatened them physically and that their dog (a pit bull cross) has attacked their dog and tried to attack at least one of them so that they no longer feel safe using the common back yard. The Landlord said the upstairs tenants recently gave him written notice that they are ending their tenancy due to the acts of the Tenants.

The Landlord said he has asked the Tenant since the beginning of the tenancy to get rid of the garbage piled up outside but he has not done so. The Landlord said he spoke to the Tenant's son on April 16, 2012 and advised him that they were not permitted to smoke in the rental unit and he agreed. The Landlord said soon after, however, he received more complaints from the upstairs tenants about the smoking and other matters so on April 23, 2012, he spoke to the Tenant's son again. The Landlord said he advised the Tenant's son that if there were more complaints, the Tenant would be evicted and he said he understood. The Landlord said he continued to receive complaints from the upstairs tenants and as a result on April 30, 2012, he served the Tenant's son with the One Month Notice. The Landlord claimed that during one of these visits he noticed that the Tenant's dog had damaged a carpet however the Tenant (or his son) would not let him take a picture of it. The Landlord also claimed that he could smell marijuana when he approached the rental unit on April 30, 2012.

The Tenant claimed that his difficulties with the upstairs tenants started over their shared use of a mail box. The Tenant said the Landlord told him at the beginning of the tenancy to get a key for the mail box from the upstairs tenants but they would not give him one. The Tenant said he could not retrieve his mail so he complained to the Landlord who advised him that he would arrange to rent another mail box but in fact, he took no steps to do so. The Tenant said he was frustrated that he was not getting his mail so he went to the post office and at the end of April 2012 they changed the lock on the mail box and provided a copy of the new key to the Tenant and the upstairs tenants.

The Tenant said he also had issues with the upstairs tenants over the use of the laundry facilities and parking but later learned that these facilities were not included in his rent so he did not pursue it further. The Tenant said there was nothing in the tenancy agreement that prohibited him from having a dog and the Landlord knew at the beginning of the tenancy that he had a dog and did not ask any questions about it. The Tenant denied that his dog attacked the other tenants' dog or them. The Tenant said there was also nothing in the tenancy agreement that said he could not smoke inside

but in any event he claimed that he did not smoke inside. The Tenant claimed that the smell of marijuana was from a neighbouring property. The Tenant denied that he made any threats to the upstairs tenants although he admitted that he was getting frustrated with them because he was not getting his mail. The Tenant also denied that he made an excessive amount of noise. The Tenant admitted that he had left some articles outside in a common area that he intended to dispose of but had not yet done so.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In support of the One Month Notice, the Landlord provided witness statements from the upstairs tenants. However, I find that I cannot give a lot of weight to these statements because the deponents did not attend the hearing to be cross-examined on their statements and given that the Tenant disputed the claims made in them, I find that they are unreliable. The Landlord also relied on a witness statement of a person who attended the rental property with the Landlord on April 16 and 23, 2012 and who attested to the warnings given to the Tenant's son on those occasions.

However, given the contradictory evidence of the Landlord and the Tenant, and in the absence of any reliable corroborating evidence from the Landlord to resolve the contradiction, I find that there is insufficient evidence to make out any of the grounds alleged on the One Month Notice. In other words, I find that this is a case of the upstairs Tenants' claims against the Tenant's and without any further evidence from the Landlord I find that **at this time** he has not met the burden of proof required of him to end the tenancy. Consequently, the One Month Notice to End Tenancy dated April 30, 2012 is cancelled and the tenancy will continue.

However, while I find that the pile of garbage left in the common area by the Tenant does not constitute grounds **at this time** to end the tenancy, I do find that it is a nuisance and a potential health risk and accordingly ***I Order the Tenant pursuant to s. 62(3) of the Act to remove the garbage from the rental property no later than June 10, 2012, after which time the Landlord may remove it and recover the cost of doing so from the Tenant.***

As the Tenant has been successful in his application to cancel the One Month Notice, he is entitled to recover the \$50.00 filing fee he paid for this proceeding from the Landlord and I order pursuant to s. 72(2) of the Act that he may deduct that amount from his next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated April 30, 2012 is cancelled and the tenancy will continue. The Tenant is ordered to remove his garbage from the rental property no later than June 10, 2012.

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: May 30, 2012.

Residential Tenancy Branch