



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's 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"), for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The 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 to 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.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Is the tenant entitled to a monetary order and to recover the filing fee?

Background and Evidence

This month to month tenancy began on December 1, 2011, monthly rent is \$650.00 and the tenant paid a security deposit of \$325.00 at the beginning of the tenancy as well as a key fob deposit of \$50.00.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated April 30, 2012, was delivered via posting on the door on that date, listing an effective end of tenancy on May 31, 2012.

Section 90 of the Act states that documents served in this manner are deemed delivered three days later. Thus the effective move out date is automatically changed to June 30, 2012.

The causes as stated on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk, 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, or jeopardized a lawful right or interest of another occupant or the landlord and knowingly gave false information to a prospective tenant or purchaser of the rental unit.

The landlords' relevant evidence included a copy of a letter from another tenant of the residential property, dated May 17, 2012, a hospital admission form from that tenant, and a copy of a police officer's business card with a file number.

In support of their Notice, the landlord's agent testified he has received numerous noise complaints about the tenant from other tenants of the residential property. The landlord's agent also submitted that the tenant attacked a fellow tenant, the writer of the letter in evidence.

When questioned, the landlord's agent stated there were no written notices or warnings to the tenant about the noise level. Additionally, the landlord's agent could not produce proof that the tenant had engaged in illegal activity.

In response, the tenant pointed out an error in the Notice, which was in incorrect rental unit address.

The tenant denied making excessive noise or in general, denied committing any of the causes listed.

The tenant argued that he was entitled to a monetary order for \$100.00 for his time in disputing the landlord's Notice.

Analysis

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

Once the tenant made a timely 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, put the landlord's property at significant risk, 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, or jeopardized a lawful right or interest of another occupant or the landlord and knowingly gave false information to a prospective tenant or purchaser of the rental unit.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to prove the causes listed on the Notice.

In reaching this conclusion, there is no documentary evidence of the landlord ever cautioning the tenant and that the tenant was ever issued written warnings. Additionally, the letter from the other tenant of the residential property was date weeks after the Notice was issue, which would not have been able to serve as a cause for the Notice issued on April 30, 2012.

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

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, issued April 30, 2012, for an effective move out date of May 31, 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.**

I also find that I do not have authority to award an applicant for costs associated with preparing paperwork or attending a hearing as these are not costs enumerated as recoverable under the Act. I therefore dismiss his monetary claim for \$100.00.

I find the tenant's application had merit and I therefore award him recovery of the filing fee of \$50.00. To satisfy this monetary claim, the tenant is authorized to deduct \$50.00 from his next or a future month's rent payment.

Conclusion

The 1 Month Notice to End Tenancy for Cause is cancelled.

The tenant's monetary claim for \$100.00 is dismissed.

The tenant is awarded recovery of the filing fee and may deduct \$50.00 from his next or a future month's 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: May 25, 2012.

Residential Tenancy Branch