



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause issued on May 21, 2012.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

Neither party submitted a copy of the Notice in dispute. At the start of the hearing the details of the Notice were established, by agreement.

The landlord stated he had submitted copies of 2 letters as evidence. The tenant had copies; they were not before me. The landlord read from these letters and I considered that oral testimony.

The landlord's 2nd witness, a volunteer, did not testify and I considered her letter, read by the landlord, as evidence.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on May 21, 2012, be cancelled?

Background and Evidence

The tenancy commenced on June 1, 2010; rent is currently \$340.00 due on the first day of each month. The tenant resides in a building that offers subsidized rent to seniors; there are 63 units in the building.

The landlord and the tenant agree that on May 21, 2012, a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on June 22, 2012. The tenant applied to cancel the Notice on May 28, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and
 - put the landlord's property at significant risk.
- That the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or well-being of another occupant;
 - jeopardize a lawful right or interest of another occupant or the landlord; and
 - That the tenant has breached a material term of the tenancy that was not corrected within a reasonable time; and that the tenant has assigned or sublet the rental unit without written consent.

On May 14, 2012, the landlord issued the tenant a letter indicating that the tenant would not receive any other warning in relation to "pot smoking" that was occurring in his suite. The smoking was alleged to be causing problems with other occupants and that a failure to stop smoking marijuana would end his tenancy.

On May 20, 2012, in the very early hours of the morning, the manager was awakened by the police who requested entry to the tenant's unit. The manager alleged that the tenant was seriously inebriated and had been smoking. The landlord stated this was an on-going problem with the tenant.

The landlord stated that on May 20, 2012, he had met the tenant in the laundry room and found him to be in a drugged state. The tenant was washing someone else's clothes and told the landlord that he had taken a lot of pills. The tenant also smelled strongly of alcohol. The next day the tenant was given the Notice to end tenancy.

On May 21, 2012, a 2nd letter was issued to the tenant by the landlord. This note stated that the tenant's continual "drunken and drugged up" behaviour has resulted in the Notice to end tenancy.

The landlord is concerned for the safety of other occupants in the building, 25 of who require assistance to leave if an emergency should occur. The building is slowly

moving toward non-smoking status, but approximately 25 occupants retain the right to smoke. As new tenants arrive, they will not be able to smoke in their units.

The landlord's witness reiterated the contents of her letter, which was read. She lives next to the tenant and complained approximately 4 months ago that she could smell marijuana in the hall way and in her unit, as a result of the tenant's smoking. Her letter indicated that smoking marijuana was not acceptable to many of the disabled people in the building. The witness moved into the building 6 months ago and was not told that her neighbour was allowed to smoke.

The landlord had a 2nd witness, a volunteer, wrote a note indicating every time she saw the tenant he was under the influence of alcohol, drugs and smelled of marijuana. She alleged that the tenant allows street people into his unit; that she has lent him money in the past but he just spends it on alcohol.

The tenant responded that the allegations are not substantiated and that while he does associate with a family member who has a medical marijuana certificate, he does not smoke marijuana. The tenant does smoke cigarettes in his unit.

On the day the tenant met the landlord in the laundry room he was doing his own laundry and was not under the influence of drugs or alcohol. He had discussed his medical prescriptions with the landlord; who has misinterpreted the situation by alleging the tenant had taken multiple drugs at once.

The tenant acknowledged that on May 21, 2012, it was the 3 year anniversary of his wife's death; that he was depressed and a friend had called the police out of concern for his well-being. The police had to wake the manager as they did not have the unit number. The landlord did not enter the unit with the police and cannot have known if the tenant was smoking; the tenant submitted he was not. The landlord did not dispute this submission.

The tenant received a letter dated June 8, 2012, summoning him to a board meeting with the housing association. He and his advocate attended the June 14, 2012, meeting. The board members had copies of the tenant's evidence and wished to discuss the hearing. The tenant refused and said he wished to make his submissions at the hearing. The landlord stated that it was possible the board was considering rescinding the Notice; but he does not know what their plans were or the purpose of that meeting.

The tenant submitted a letter from the neighbour on his other side and an occupant from the 4th floor; both of whom signed indicating that the tenant has never displayed behaviour that has caused them concern; that he is a valued member of the building and makes a positive contribution to the social life of the building. The tenant is a serving member of the Tenant Advisory Committee.

The tenant submitted copies of minutes from the May 18 and May 29, 2012, Tenant Advisory Committee Board Meetings, outlining some repairs they would like to have completed. The tenant was present at both meetings.

Analysis

The tenant applied to cancel a Notice ending tenancy for cause issued on May 21, 2012; the effective date of the Notice was June 22, 2012. The Act corrects an effective date; in this case the date would be June 30, 2012.

In a case where a tenant has applied to cancel a Notice to End Tenancy for Cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenancy should end for the reasons indicated on the Notice.

There was no evidence before me of any investigation of allegations made in the past in relation to the behaviour alleged by the tenant's neighbour and the one other witness, a volunteer in the building. The landlord has made serious allegations that the tenant is frequently drunk and smoking marijuana; yet the only person who can attest to the smoking is one immediate neighbour; who, at the start of her recent tenancy, was not informed that the tenant was allowed to smoke cigarettes.

Even if the tenant were smoking marijuana no evidence was supplied that showed the tenant is damaging the property.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

“To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others.”

I find that a significant disturbance would be one which was substantial or serious in nature and, that serious jeopardy must reflect a situation, as defined by ***Black's Law Dictionary*** that includes a “danger; hazard; peril.” In order to find that the tenant has engaged in activity that has placed the landlord's property at significant risk, I must find that the damage is substantial, serious and posed harm, danger or loss. This was not the case.

There was evidence before me that the tenant is a contributing member of the building; he serves on a tenant committee and has support of other occupants, who vouched for him.

Therefore, I find, on the balance of probabilities that the landlord has issued the Notice to end tenancy for reasons that are not substantiated and that the Notice is of no force or effect.

The tenant is free to consume alcohol in his room, as long as others are not unreasonably disturbed. There was no evidence before me, that even if the tenant were smoking marijuana, that this would cause any more harm than that caused by cigarette smoke. Illegal activity must be proven to result in the loss of quiet enjoyment, jeopardy to others or damage to the property; the landlord did not meet this standard.

Conclusion

The Notice to End Tenancy for Cause issued on May 21, 2012, is of no force or effect. The tenancy will continue until it is ended as provide by the Act.

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: June 18, 2012.

Dispute Resolution Officer
Residential Tenancy Branch