



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee cost.

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

The landlord stated that several pages of evidence were supplied prior to the hearing, sent in by facsimile. I did not have this information before me in the file or recorded in the Residential Tenancy on-line system. However, the landlord and her witness were provided with ample time to make the submission via oral testimony.

The tenant provided one page of late evidence which was set aside; the tenant was at liberty to provide oral testimony.

The tenant stated that he had a witness present, who was asked to leave the room until he was required. At one point in the hearing I heard the tenant speaking with someone; at this point I told the tenant that I would not consider the witness' testimony; given he had not removed himself from the hearing, as requested.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy issued on April 30, 2012, be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The landlord and the tenant agree that 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 the day of the hearing; May 31, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The tenancy commenced in November 2010, the tenant is one of 7 occupants of a home, where individuals rent rooms. Two bathrooms are shared; the owner does not live on the premises.

The landlord stated that there has been conflict between the tenant and another occupant, S.D., which has been on-going. In the early part of April the landlord issued the tenant a written warning in relation to conflict with the landlord's witness, S.D., who has lived as an occupant in the home for 2 years. The tenant acknowledged receipt of this written warning.

The parties agreed that on March 9, 2012, there was a conflict that occurred between the tenant and S.D. The landlord could not provide the details of any specific disturbances that have occurred since March 9, 2012, and agreed that the Notice was issued based solely on the conflict with S.D. The landlord mentioned that at times the tenant and his guests do disturb others. The landlord alleged that other occupants did not wish to provide written statements, as they did not feel comfortable doing so.

The witness S.D. testified that on March 9, 2012, the tenant threatened to have someone beat her up. There had been some problems with the cleanliness of a bathroom and S.D. believes that the tenant thought she had blamed him. This belief led the tenant to threaten S.D. There was another occupant present at the time of the alleged threat, but no statement from that individual was provided.

The witness read from a May 23, 2012, note issued by her doctor which indicated that S.D. is under treatment for stress caused by other tenants. S.D. alleged that the tenant is always "harassing," which is causing her great discomfort. S.D. wished to provide testimony in relation to issues of alleged fraud that had occurred last year; I determined

that submission was not relevant to the reasons given on the Notice and declined to hear that testimony.

The tenant denied having made any kind of threat to have the witness assaulted. The tenant stated he and S.D. used to be on very friendly terms, that there was a disagreement on March 9, but that S.D. tends to treat him badly by yelling and becoming agitated. On March 9, 2012 S.D. had yelled at the tenant and he told her that he would like to have another female speak with her. The tenant called the landlord to explain what had happened.

The landlord did not recall speaking to the tenant on May 9; however, there was agreement that a fair amount of communication passes between the landlord, the tenant and the witness.

During the hearing the landlord experienced some difficulty with her telephone connection. The landlord was initially disconnected for a period of time, during which no testimony was given.

The landlord was again disconnected from the conference call hearing; this occurred after the witness had finished providing her testimony and she had left the hearing.

While waiting for the landlord to return to the hearing the tenant was placed on hold, where he could be heard. After approximately 10 minutes of waiting the tenant was could be heard talking with an individual who he identified as S.D. I could clearly overhear the conversation. S.D. had come to the tenant's door and had begun to yell at him, accusing the tenant of being dishonest and having committed fraud. I attempted to speak with S.D. but the tenant was not using a speaker phone.

After almost 20 minutes the landlord was able to re-enter the hearing. At this point I explained what I had overheard and that I was very confident that S.D. had approached the tenant, in his room, and could be heard yelling at him. I explained to the landlord that I would be taking that altercation into account in reaching my decision. The landlord did not offer any objection and indicated it was difficult for her to assess the behaviour of people when she does not live in the home.

Analysis

After considering all of the testimony submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenancy should end based on the reasons included on the Notice to end tenancy for cause issued on April 30, 2012.

The landlord has the burden of proving the reasons and relied upon the testimony of another occupant, S.D., who alleged that on March 9, 2012, the tenant had threatened to have her assaulted.

There was no evidence before me as to why, if S.D. felt so threatened, that action by the landlord was not taken much earlier to address this issue with the tenant. No investigation of the allegation of March 9, 2012, appears to have been made and the tenant was not given a written warning until approximately one month after the alleged threat was made. There was no evidence of any other incident having occurred between the time the written notice and notice ending tenancy were issued.

S.D. alleged that the tenant has harassed her by constantly being around her; however, the allegation that she is fearful of the tenant was completely diminished by the actions of S.D. which I overheard during the hearing.

Therefore, considered in its totality, I favoured the evidence of the tenant over the landlord and her witness. The landlord has relied on her witness, who I find lacked credibility. I based this assessment on having clearly overheard the witness approach the tenant in his room and yell at him, while he was continuing to wait with me for the return of the landlord to the hearing. I find that S.D.'s submission she is fearful of the tenant was inconsistent with her behaviour that I was able to overhear and, as a result, her submission she is fearful is called into question. It is not reasonable that someone who is fearful of an individual would go to that person's door and yell at him.

Therefore, I find that the 1 Month Notice to End Tenancy for Cause issued on April 30, 2012, is of no force and effect and that the tenancy will continue until it is ended as provided by the Act.

As the tenant's application has merit I find he is entitled to the filing fee cost and he may deduct \$50.00 from the next month's rent due.

Conclusion

I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act.

The Notice is cancelled; the tenancy will continue until it is ended as provided by the Act.

The tenant is entitled to deduct the \$50.00 filing fee from the next month's rent due.

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 01, 2012.

Residential Tenancy Branch