



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that on or about April 13, 2012, the tenant was served with a one month notice to end tenancy for cause (the "Notice"). The Notice alleged 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, that 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 that the unit must be vacated to comply with a government order. At the hearing, the landlord stated that the box indicating that vacancy was required to comply with a government order had been checked in error.

The landlord's agent testified that the tenant has engaged in constant fighting with others and that her yelling has disturbed other tenants. She stated that one tenant has vacated a nearby unit because of the disturbance and the landlord has moved another tenant to a different location. She further stated that the disturbances occur several times each month and that many verbal altercations occurred with K., who is another tenant. The agent claimed that she has received many complaints about the tenant's dogs, who she claims bark incessantly when the tenant is not at home. The landlord's agent also expressed frustration that the tenant posted letters on her window.

The tenant denied having caused a disturbance, although she acknowledged that she and K. had had a few arguments. She stated that K. would confront her when K. was drinking and that on occasion, an argument would ensue. The tenant denied that her

dogs had barked excessively and stated that she posted letters on the landlord's agent's window because she would not open her door so she could hand the letters to her.

N.C. appeared as a witness for the tenant and he testified that in his opinion, the tenant does not create any greater disturbance than do any other tenants.

Analysis

The landlord bears the burden of proving that there are grounds to end the tenancy. The landlord provided written statements from other tenants, but did not produce the authors of those statements for cross-examination. Although the landlord's agent testified as to her experience with the tenant, the tenant denied her allegations and provided testimony. The tenant's explanation that she posted letters on the landlord's agent's window because the agent would not open the door sounds like a reasonable solution.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, the party making the claim has not met the burden of proof on a balance of probabilities and the claim fails. I found both parties to be equally credible and I find that the landlord has failed to prove on balance that there are grounds to end the tenancy. For this reason, I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

Conclusion

The Notice is set aside.

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 05, 2012

Residential Tenancy Branch