



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a “New Hearing” to hear matters pertaining to The Tenants’ application for Dispute Resolution to cancel a notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for this application.

This New Hearing was granted by a Dispute Resolution Officer (DRO) in her June 01, 2012 Decision that was issued in response to the Tenant’s application for Review Consideration. The DRO suspended the Decision issued by another DRO on June 01, 2012 pending the outcome of this New Hearing.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other’s testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Tenant entitled to an Order to set aside or cancel a Notice to End Tenancy issued for Cause (the Notice)?

Background and Evidence

The following facts are not in dispute:

- The parties agreed they entered into a written month to month tenancy agreement that began on August 24, 2010; and
- Rent is payable on the first of each month in the amount of \$650.00; and
- On or before August 24, 2010 the Tenant paid \$325.00 as the security deposit; and
- The Landlord personally served the Tenant a 1 Month Notice on May 8, 2012 for reasons that:
 - *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*

The Landlord submitted that near the end of April 2012 the Tenant drove to the Landlord's home to deliver her rent payment and instead of driving into the Landlord's driveway the Tenant drove up on the lawn missing the driveway completely. The Landlord advised that when the Tenant left he watched her back up into his neighbour's driveway and headed back to her rental unit. The Landlord asserted that the Tenant was driving while intoxicated and that she was under the influence of alcohol.

The Landlord confirmed he did not call the police; he did not issue the Tenant a written warning; and his residence is located approximately two blocks away from the Tenant's rental unit but still within the same community.

The Tenant submitted that other tenants in the community do not consider her a menace. She pointed to the fact that the Landlord did not call the police on that day and that she does not believe she was drunk at the time she delivered her rent. The Tenant argued that the Landlord cannot hold a Tenant accountable to her tenancy while out in the community.

In closing the Tenant asserted that the Landlord's witness statements that were submitted in evidence are based on hearsay as neither one of them was present at the time of the alleged occurrence.

The Landlord confirmed that no one else was present at the time of the occurrence and clarified that one statement is written by someone who witnessed his reaction to the situation and the other is a character witness.

Analysis

Section 47(1)(e)(ii) of the Act provides that a Landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property or the landlord.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

The Landlord relies on his testimony that the Tenant drove onto his property while intoxicated and two written statements by individuals who were not present at the time of the alleged occurrence. These statements speak to the Landlord's reaction and someone's view of the Tenant's character and are not evidence of the event in question. The Tenant disputed the allegation by stating she does not believe she was drunk at the time she drove onto the Landlord's property.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence that substantiates the

allegation, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove his allegation that the Tenant committed an illegal offence of driving drunk onto the Landlord's property and putting him at risk. Accordingly, the only evidence before me relating to this occurrence was disputed verbal testimony which I find to be insufficient to meet the Landlord's burden of proof.

Based on the above I find that the Landlord has provided insufficient evidence to uphold the 1 Month Notice to End Tenancy for cause. Accordingly, I uphold the Tenant's application and I cancel the Notice.

The Tenant has been successful with her application; therefore I award her recovery of the **\$50.00** filing fee.

Conclusion

The suspended Decision issued on June 01, 2012, is HEREBY **set aside** and is no longer of any force or effect.

The 1 Month Notice to End Tenancy issued May 8, 2012 is **HEREBY CANCELLED** and is of no force or effect.

The Tenant may deduct the one time monetary award of **\$50.00** from her next rent payment as full satisfaction of the award to recover her filing fee.

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 29, 2012.

Residential Tenancy Branch