



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR; OLC; ERP

Introduction

This hearing dealt with the Tenant's application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued March 30, 2012; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and for an Order that the Landlord make emergency repairs to the rental unit.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

The Tenant's witness also gave affirmed testimony at the Hearing.

This matter was scheduled to be heard on May 23, 2012. It was adjourned, by consent, to June 13, 2012, due to a death in the Tenant's family.

Preliminary Matters

1. Rule 2.3 of the Rules of Procedure provides that unrelated disputes contained in a single application may be dismissed with or without leave to reapply. I find that the Tenant's application for an Order that the Landlord comply with the Act and make emergency repairs to the rental unit is not sufficiently related to his application to cancel the Notice. The Tenant stated that he wished to deal with his application to cancel the Notice and therefore the remainder of his application is dismissed with leave to reapply.
2. The Tenant filed his Application to dispute the Notice on April 30, 2012.

The Landlord testified that the Notice to End Tenancy was sent to the Tenant, via registered mail to the rental unit, on April 17, 2012. The Landlord stated that the Notice was returned to the Landlord, unclaimed. The Landlord did not provide any documents to substantiate service by registered mail. The Tenant stated that he has had some difficulties with mail delivery and that he did not receive notification of any registered mail being delivered.

The Landlord testified that the resident manager posted a copy of the Notice to the Tenant's door at the beginning of April, 2012, but he was not certain of the date. The Landlord's resident manager was not available to give testimony with respect to when and how the Notice was served. The Tenant testified that he was away from the rental unit at the beginning of April, 2012, and that his neighbour had removed the Notice from his door and handed it to him on April 20 or 21, 2012, when the Tenant returned.

Based on the testimony of the parties, I find that the Tenant received the Notice on April 21, 2012, and that he filed his Application to cancel the Notice within the 10 days allowed under Section 47(4) of the Act.

Issue to be Decided

Should the Notice issued March 30, 2012, be cancelled?

Background and Evidence

The Landlord gave the following testimony:

The Landlord stated that the Tenant used to be the resident caretaker for the rental property, but was replaced by another resident caretaker in December, 2008. He stated that the Tenant refuses to have anything to do with the new caretaker and that the Tenant is resentful of the new caretaker.

The Landlord testified that the Tenant was mopping the floor in the common area on March 3, 2012. He stated that the resident caretaker took offence to the Tenant mopping the floor, as it was no longer his job, and that the Tenant shook his mop at the caretaker. The Landlord stated that there was a chemical solution on the mop that caused chemical burns to the caretaker's eye.

The Landlord testified that the police were called by the Tenant and that the police pinned the caretaker to the wall and forced their way into the caretaker's apartment to perform a search. The Landlord suggested that the Tenant must have said something misleading to the police to warrant such aggressive action on their part.

The Landlord stated that he was not present when the incident occurred and that the caretaker was not available to give testimony.

The Landlord stated that he was concerned that if the Tenant does not move, the issues between the caretaker and the Tenant will escalate and something devastating could happen.

The Tenant and his witness provided the following testimony:

The Tenant denied that he was upset that he was no longer the caretaker. He stated that he avoids being perceived as working as a caretaker in the building and that he was simply mopping the floor because he was cleaning his apartment and the hallway was also in need of cleaning. The Tenant stated that there is a significant pest control problem in his rental unit and that he was attempting to get rid of them. He agreed that he probably overstepped his boundaries by cleaning the hallway, but that the caretaker had come to the Tenant's suite and assaulted him and told him that if he mopped the hallway again, he would "take care of him". The Tenant denied shaking his mop at the caretaker, and stated that the caretaker's red eye was caused by something else. The Tenant stated that he will never mop or clean the common areas again.

The Tenant's witness testified that she was there during the incident on March 3, 2012, and witnessed the whole thing. She said that other than the Tenant and the caretaker, she was the only witness. The witness stated that the Tenant was mopping the hallway in the common area and a man, who she believed to be the manager, opened the Tenant's door and was very angry that the Tenant was mopping the floor. The witness stated that she was afraid that the man might physically abuse the Tenant because he was so angry. The Tenant's witness stated that no mop-waving occurred and that the man did not wince or ask for eyewash, which she would have expected if he got some chemical solution in his eye. The witness stated that she sometimes stays at the Tenant's home and that there are moths and bedbugs in the rental unit.

Analysis

When a Tenant makes an application to cancel a notice to end tenancy for cause, the onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice to end tenancy.

In this case, the Landlord alleges two reasons for ending the tenancy:

- the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Landlord stated that the incident of March 3, 2012, gave rise to both of the reasons to end the tenancy and that there was no other incident.

I find that the Landlord has not provided sufficient evidence that the tenancy should end for the reasons provided on the Notice. The Landlord was not present during the incident of March 3, 2012, and did not provide a witness to the event. The Tenant, who was present, and his witness both provided similar testimony about what happened on March 3, 2012. It is clear from their testimony that the caretaker was the aggressor, not the Tenant. I find insufficient evidence that the Tenant caused injury to the caretaker's eye.

Therefore, I grant the Tenant's application to cancel the Notice. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Notice to End Tenancy issued March 30, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of 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 15, 2012.

Residential Tenancy Branch