



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause issued on June 14, 2012.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issue

On the application for Dispute Resolution the tenant's son is listed as a tenant. The son is not a tenant as defined in the Act, but is an occupant. As a result, the name of the tenant's son was removed from the style of cause.

The tenant has applied to be allowed more time to make an application to cancel a notice to end tenancy.

The tenant testified that he became very ill the day after the notice was served on him and was hospitalized during the period of June 17 to June 27, 2012 and again from June 31, 2012 to July 20, 2012. The tenant stated that during this entire time he was very ill and almost died. The tenant stated he was able to send his son in July 5, 2012, to make the Application for Dispute Resolution; however it was outside the time limits.

In this case, I find the tenants circumstances to be exceptional. The tenant is granted more time to make the application to cancel a notice to end tenancy.

In a case where a tenant has applied to cancel a notice 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.

The landlord request an order of possession should the tenant's application be dismissed.

Issue(s) to be Decided

Should the notice to end tenancy issued on June 14 2012, be cancelled?

Background and Evidence

The tenancy began on January 1, 2011. Rent in the amount of \$975.00 was payable on the first of each month. A security deposit of \$487.50 was paid by the tenant.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on July 31, 2012.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Put the landlord's property at significant risk.

The landlord testified on March 24, 2011, there was a complaint from one of the other occupants that the police were called due to the drinking and loud noise coming from the tenant's rental unit. The landlord stated that the noise from the tenants rental unit has be on and off during the entire tenancy and the tenant has been verbally warned on several occasions.

The landlord testified that they no longer want the tenancy to continue as the incidents continue to escalate.

The landlord testified on April 29, 2012, she received a complaint for another occupant that the tenant son was under the influence and causing a disturbance and the police attended at 3:50 a.m. and the son was arrested.

The landlord testified on May 2, 2012, she served the tenant with a notice to end tenancy, however, the tenant promised there would be no more disturbances, and they agreed to mutually cancel the notice.

The landlord testified on June 10, 2012, she received another complaint from an occupant, this time it was the tenant's son and his girlfriend fighting at 3:00 a.m. The landlord stated the police attended and removed the girlfriend from the rental property.

The tenant testified that on April 29, 2012, he called the police on his son, as he was causing trouble.

The tenant testified on June 10, 2012, it was not a fight between his son and his son's girlfriend; it was because he lost his temper and was yelling at his son for not completing his chores. The tenant stated he acknowledges the time was at 3:00 a.m. The tenant stated that the police only gave the son's girlfriend a ride home.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The landlord has provided several reasons in the notice, however, after considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

On April 29, 2012, the police attended the rental unit at 3:50 a.m. as a result of the tenant's son being under the influence and causing an unreasonable disturbance.

On May 2, 2012, the tenant was served with a notice to end tenancy. However, that notice was mutually withdrawn on the condition there would be no further disturbances.

On June 10, 2012, the police attended the rental unit at 3:00 a.m., the evidence of the tenant was that he was yelling at his son.

In this case, I find the tenant has unreasonably disturbed another occupant as a result of the landlord's notice issued on June 14, 2012, is a valid notice to end tenancy. Therefore, I dismiss the tenant's application to cancel the one month notice to end tenancy.

The landlord has agreed to extend the effective date of the notice to August 31, 2012, and requested an order of possession for that date.

As the tenant's application is dismissed and the landlord has made an application for an order of possession, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states: Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **August 31, 2012, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is dismissed.

The landlord is granted an order of possession.

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: July 31, 2012.

Residential Tenancy Branch