



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR; FF

Introduction

This Hearing dealt with the Tenant's application to cancel a *One Month Notice to End Tenancy for Cause* (the Notice); and to recover the cost of the filing fee from the Landlord.

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

The Tenant testified that he sent the Notice of Hearing documents to the Landlord by registered mail. He did not have the registered mail receipts readily available and could not recall the date that he mailed the documents. The Landlord testified that she received the Notice of Hearing documents on June 18, 2012.

I have recorded the testimony as it was given by both parties, but I am not certain that the Landlord was providing accurate information. I do not mean to suggest that the Landlord was not being truthful, but I am not confident that the Landlord understood what documents were being referred to, or what actual date she was served, when she testified that she received the Notice of Hearing documents on June 18, 2012, because the Tenant filed his Application for Dispute Resolution on June 18, 2012. However, the Landlord attended the conference and therefore I am satisfied that she received the Notice of Hearing documents.

The Landlord testified that she posted copies of her documentary evidence to the Tenant's door on July 1, 2012.

The Tenant testified that he sent copies of his documentary evidence to the Landlord on June 19, 2012, by registered mail. The Landlord stated that she did not receive any documentary evidence from the Tenant. Later in the Hearing, the Tenant provided tracking numbers for his documentary evidence. A search of the Canada Post Tracking system indicated that the Landlord signed for the documents on June 21, 2012. The Landlord insisted again that she did not receive them.

Issue to be Decided

Should the Notice issued June 8, 2012, be cancelled?

Background and Evidence

On November 23, 2011, the parties attended a Dispute Resolution Hearing which was convened to hear the Tenant's application to cancel a Notice to End Tenancy for Cause that was issued on November 1, 2011, for the following reasons:

The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

On November 24, 2012, the Dispute Resolution Officer granted the Tenant's application and cancelled that Notice to End Tenancy. In the Application for Dispute Resolution before me today, the Tenant seeks to cancel a subsequent Notice to End Tenancy that was issued for the same reasons.

The Landlord testified that since the last Hearing took place, the Tenant continues to be "verbally assaultive, loud, irritable" and uses "threatening language and posture to the owner". The Landlord testified that she has lost two tenants in the past 8 months due to the Tenant's abusive behavior. She stated that the two tenants she referred to were the same tenants she had referred to in her Hearing of November 23, 2011.

The Landlord stated that the Tenant has threatened to report the Landlord to their MLA or MP as "negligent in correcting problems of appliances, compromising his foodstuff". She stated that the Tenant was to blame for the problems with the fridge because he was misusing the thermostat control on his fridge. The Tenant denied this and stated that the fridge was not working properly.

The Landlord stated that the Tenant was verbally abusive to the fridge repairman and that the service company threatened to stop providing service at the rental property because of the Tenant's behavior. The Landlord did not provide a witness from the repair service or any documentary evidence to support her allegation. The Tenant stated that the repairman was two hours late and agreed that he was angry, but stated that he made amends with the service man and that he has "stopped by for coffee twice" since the service call.

The Landlord stated that the Tenant smokes a lot and that smoke enters other occupants' homes, which interferes with their health, safety and lawful right. The Landlord did not provide any witnesses or written statements of other occupants to substantiate this claim.

Analysis

This Hearing was challenging because the Tenant was abrupt and argumentative and the Landlord was vague with respect to dates and specifics about the tenancy. Two examples are:

1. At the beginning of the Hearing, when the Tenant was asked if he expected anyone else to attend the Hearing on his behalf, he stated that there was another person with him. I asked him to identify the person and in what capacity he was attending and the Tenant stated that the person was "a judge". I explained to the Tenant that he would have to provide the person's name and that if he was going to be a witness, he would be excluded until he was called. The Tenant then stated that he would not provide the person's name and that the person would not be part of the proceedings. The Tenant stated that the person left the Hearing.
2. The Landlord was confused about what documents were being referred to throughout the Hearing. She confused "Notice of Hearing" documents, "Notice to End the Tenancy" and "documentary evidence" was not able to provide specific dates without considerable pausing and prompting and rephrasing of questions.

In a situation where a Tenant seeks to cancel a Notice to End Tenancy, **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.**

The Landlord testified that the Tenant was disturbing other occupants in the building, but did not provide any witnesses to support her claim. In her documentary evidence, the Landlord provided a copy of a letter from a former occupant of the rental property dated November 1, 2011. The same letter was provided in evidence for the previous Application for Dispute Resolution heard November 23, 2011. This letter was found to be insufficient to end the tenancy in November, 2011.

I find that the Landlord did not provide sufficient evidence that the Tenant had misused the refrigerator at the rental unit.

Although I find it unlikely that the refrigerator repairman would drop into the Tenant's home for coffee, I find that the Landlord provided insufficient evidence that the service provider threatened to stop making service calls to the rental property. I caution the Tenant that being rude to a service provider because he is late is not acceptable behavior.

Overall, I find that the Landlord has failed to provide sufficient evidence that the tenancy should end for the reasons indicated on the Notice to End Tenancy issued June 8, 2012. Therefore, I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

I note that this is the second Notice to End Tenancy for the same reasons that the Landlord has issued in eight months. I also note that at both Hearings, the Landlord did not provide sufficient evidence in the form of witnesses or documentary evidence to support the Notice. Both parties are advised that there are resources available to them to provide procedural advice. An Information Sheet accompanies this Decision with contact information and a link to the Residential Tenancy Branch website, which the parties may find helpful.

I order that the Tenant bear the cost of the filing fee.

Conclusion

The Notice to End Tenancy issued June 8, 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: July 17, 2012.

Residential Tenancy Branch