



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing a tenant more time to make an application to cancel a Notice to end tenancy – Section 66; and
2. An Order of Possession of the rental unit – Section 54.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing the Tenant stated that he was seeking an order cancelling the Notice to End Tenancy and was currently in possession of the unit. The Landlord states that it was apparent to the Landlord that the Tenant was seeking a cancellation of the notice and does not object to an amendment to this effect. Given the consent of the Landlord, I therefore amend the application to include a request for an order cancelling the Notice to end Tenancy and to remove the request for the order of Possession.

The Tenant further states that the first request for more time was made in relation to more time needed to move out of the unit. The Tenant states that he received the Notice to End Tenancy for Cause (the “Notice”) in person from the Landlord after the long week-end in July 2012 and that it must have been on July 9, 2012. The Tenant states that due to his medical condition he sometimes becomes confused on dates. The Landlord states that the Notice was served on the Tenant in person on June 26, 2012. The Landlord states that this service was witnessed but that the witness was not

available to provide evidence of service. It is noted that the Tenant's application indicates a date of service of the Notice but is difficult to read. The Landlord states that her copy of the application is clear and that the Notice is noted to have been received on July 9, 2012 and that the Landlord considers that the Tenant has made its application in time. Considering that the Landlord knew that the Tenant was stating the date of service of the Notice in the application as July 9, 2012 and did not provide corroborating evidence for a different date of service at the Hearing, I find that the Landlord has not proven on a balance of probabilities that the Notice was served on June 26, 2012. Taking into consideration the Landlord's position that the Tenant made his application on time, I find that the Tenant has filed his application to dispute the notice within the time period allowed and therefore does not require more time to make the application.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The Landlord states and the Tenant does not deny that the Notice to End Tenancy for Cause (the "Notice") lists the following causes:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
2. The tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. Put the landlord's property at significant risk.

The Landlord states that the cause in relation to a breach of a material term was made in error and withdraws that item.

The Landlord states that throughout the tenancy the Tenant has caused problems "off and on" but for the past six month the problems have become worse. The Landlord

states that the Tenant has been intoxicated and rude to other tenants and the Landlord and that he has yelled and screamed at workers who are working on the building. The Landlord states that the Tenant's behaviour has alarmed other tenants, at least one of whom has indicated that they will end their tenancy if the Tenant remains. The Landlord states that the Tenant have received warnings about his behaviour and that the Landlord has received written complaints from other tenants. The Landlord states that on one occasion the Tenant was seen by the Landlord in his unit with the door open, sleeping on the couch with a lit cigarette on one occasion and on another occasion another tenant saw him with an unlit cigarette while sleeping. The Landlord provided letters from other tenants in relation to the actions of the Tenant.

The Tenant states that he does not drink and that his staggering or unsteadiness is a result of a number of stroke and a recent brain injury. He states that his medical condition also causes him to slur. The Tenant denies that he ever let his pants down in front of another person and the Landlord's accusations are a gross exaggeration. The Tenant does not dispute that he spoke to construction workers but that he used to work for this particular company and that the Landlord's husband was working with the construction company at the time that he spoke to the workers. The Tenant states that he was frustrated by the slowness of their work which was causing him difficulty in entering his unit. The Tenant states that he simply told the workers who were sitting around at the time to get to work. The Tenant states that the Landlord jumps on any excuse now to get him out of the unit as recently, the Tenant allowed a street person to stay at his unit for a short period of time. The Tenant states that he and the Landlord argued about the Tenant's right to have guests in his unit. The Tenant states that he has recently stopped smoking entirely but that when he did smoke in the past, it was minimal and generally outside of the unit. The Tenant states that he has never fallen asleep while smoking. The Tenant states that he is often tired in the afternoon due to his meds and takes afternoon naps as a result.

The Tenant's Witness, a counsellor for the Tenant over the past 4.5 years, states that the Tenant has been attending group and individual sessions since his first stroke and

that the Tenant had a severe stroke last year. The Witness states that the Tenant does not drink at all due to his medical condition and the type of medication he is on. The Witness states that the Tenant may be short at time but that this is due to a severe brain injury that the Tenant sustained in June 2012. The Witness states that he has attended the Tenant's unit several times and has always found the unit to be clean and tidy with everything being accessible and useable. The Witness states that the Tenant will often keep his unit door open when it is very hot outside so that he can get a cross breeze and that if others see things inside the unit that they don't like, they should not look. The Witness states that based on a home assessment the Tenant had requested a move to a unit on the bottom floor as the stairs are not safe for the Tenant but that the Landlord has not responded to the Tenant's request. The Landlord states that no such request has been received.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Noting that the other tenants' letters are in relation to the intoxicated appearance of the Tenant and given the Tenant's and Witness evidence in relation to the Tenant's medical condition, I find that the Landlord has failed to substantiate on a balance of probabilities, that the Tenant's behaviour has been caused by intoxication or is to the extent that warrants an end to the tenancy. I therefore find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

Conclusion

The Notice is not valid and is cancelled. The tenancy continues.

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: August 16, 2012.

Residential Tenancy Branch