



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order requiring the landlord to comply with the Act and a monetary order for money owed or compensation for damage or loss.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and to make submissions to me.

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

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled, an order directing the landlord to comply with the Act and a monetary order?

Background and Evidence

I heard testimony from the parties that this tenancy began approximately 6 ½ years ago, monthly rent is \$535.00 and the tenant paid a security deposit and a pet damage deposit of \$267.50 each at or near the beginning of the tenancy.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated August 7, 2012, was delivered by leaving with the tenant on that date, listing an effective end of tenancy on September 30, 2012.

The causes listed on the Notice alleged that the tenant 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 has caused extraordinary damage to the rental unit and residential property.

The landlords' relevant evidence included the Notice, a summary of the events leading to the Notice, a letter to the tenant, dated August 10, 2012, a letter to the tenant dated May 1, 2012, regarding putting kitty litter in the toilet, 2 plumbing invoices, and notices of complaint from other tenants in the residential property.

In support of his Notice, the landlord testified as follows:

Cause #1, 2-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-

The landlord said that these two issues were interrelated.

The landlord testified that once he handed the tenant a plumbing invoice, the tenant has become aggressive to him and to the other tenants. In explanation, the landlord said that the residential property is a large house with 4 suites and 8 tenants.

Additionally, according to the landlord, the tenant has been trying to control more and more of the house and yard, to the detriment of the other tenants. The other tenants do not feel safe in going to the yard and do not feel relaxed in their own home.

Upon my queries, the landlord stated he has not issued any warning letters to the tenant regarding the other complaints. I also questioned the landlord about the written notices of complaint from the other tenants, as they all appeared to be created on the same computer, due to the same font size and type.

The landlord said that 3 of the 4 letter writers were roommates in the same suite, so possibly the same computer was being used.

Cause #3-The tenant has caused extraordinary damage to the rental unit and residential property-

As to the alleged damage, the landlord submitted that the tenant caused a blockage in the sewer line due to putting kitty litter down the toilet. The landlord was informed by

the plumber that kitty litter acts like cement and creates a blockage. The landlord said the tenant has been warned about this previously.

Tenant's response-

The tenant stated he was not aware that kitty litter caused a problem and said that he only on rare occasion put his cat's excrement in the toilet, not the litter.

The tenant said that it was the other tenants, all friends, who have moved in approximately the same time and have conspired against him. This began happening when the tenant accidentally pulled down some tulips of the other tenants, although he apologized and offered to replace them.

The tenant said that the other tenants have worked towards harassing him by blocking access to his boat and damaging his garden hoses so that they won't work. The tenant also complained of someone dragging garbage across the lawn and putting it in front of his truck.

The tenant also denied being drunk or drinking on the premises, as alleged by the landlord and the other tenants. In support, the tenant directed my attention to his evidence, the letter submitted by a colleague and his doctor.

The tenant is requesting that the landlord provide him his right to quiet enjoyment and have the other tenants cease and desist from harassing him.

The tenant went on to mention that it was not all the other tenants who have complained against him, just the group of friends.

The tenant pointed out that he has lived there much longer than the newer tenants and lived there without problems until recently. The tenant said he believed this was the other tenants' campaign to have him move out.

The tenant's relevant evidence included photos of the yard, a character reference letter, a letter from his doctor and some receipts.

Analysis

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

Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant 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 has caused extraordinary damage to the rental unit and residential property.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed. In reaching this conclusion I was persuaded by the lack of written warnings to the tenant about any of the alleged infractions, with notice that a continuation of such activity could lead to the end of the tenancy.

Due to the lack of proof of written warnings, the landlord's evidence of such alleged behaviour by the tenant prior to and up to the time of the issuance of the Notice was disputed verbal testimony.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

While not making a specific finding, I also considered the possibility that the group of roommates simply had differences with the tenant and combined to bring about the end of his tenancy as I did not find their similar complaints to be compelling or persuasive.

I do find that some of the issues complained about by all tenants are simply issues that could be remedied with positive communication fostered by the landlord. The parties should be aware that 8 people living under one roof would create the possibility of a cause for tension.

I do not find any of the allegations by the landlord and the other tenants to rise to the level necessary in ending a tenancy.

While I do not condone placing a cat's excrement into the toilet if kitty litter is attached, I do not find that this is extraordinary damage as contemplated by the Act. The tenant is

hereby sufficiently warned that these repeated acts in the future may lead to the issuance of other Notices.

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued August 7, 2012, for an effective move out date of September 30, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

As to the tenant's claim for an order requiring the landlord to comply with the Act and for a monetary order, I likewise find that the tenant has failed to address his complaints concerning the other tenants' behaviour with the landlord in written form. Without such proof, I cannot conclude that the landlord was ever aware of any such issues and I thereby find the tenant has submitted insufficient evidence that he is entitled to such an order for the landlord or for a monetary order.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

I dismiss the tenant's portion of his application seeking an order for the landlord's compliance and a monetary order.

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 30, 2012.

Residential Tenancy Branch