



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant requesting an order to cancel a Notice to End Tenancy for cause.

The Landlord said they were served with the Tenant's Application and Notice of Hearing (the "hearing package") by registered mail on July 30, 2012. Based on the evidence of the Landlord and the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on June 1, 2011 as a month to month tenancy. Rent is \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 in June, 2011.

The Landlord said they served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 24, 2012 by personal delivery on July 24, 2012. The Effective Vacancy Date on the Notice is August 31, 2012. The Tenant is living in the unit and the Landlord said they want to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of other occupants, putting the landlord property at significant risk and significantly interfering with or unreasonably disturbing another tenant or the landlord.

The Landlord said they have got along with the Tenant fine and they do not have any issues with the Tenant paying the rent on time. The Landlord continued to say the reason they issued the Notice to End the Tenancy is because the Tenant does not clean the unit and as a result there is a smell coming from his rental unit which is significantly disturbing their living situation as they live upstairs from the Tenant. The

Landlord said the Tenant does not clean the unit and there is garbage building up in the unit which creates the smell. The Landlord said he has to cover his face when he goes into the unit.

The Landlord continued to say they have hired and paid for professional cleaners to clean the unit (receipt in the evidence dated November 17, 2011); they have tried to teach the Tenant to clean the unit. The Landlord said they gave the Tenant a warning letter for lack of cleanliness dated May 28, 2012. The Landlord continued to say they do not want to live with the smell from the Tenant's rental unit and the Landlord said they want to end the tenancy.

The Tenant said he has changed his ways since receiving the Notice to End Tenancy from the Landlord. The Tenant said he is cleaning himself and eating out more so that he does not create garbage. The Tenant continued to say that he has cleaned the unit and opened the windows to let fresh air in and there is no excess garbage in the unit at the present time.

The Tenant presented a witness D.A. who was the Tenant's previous Landlord and she is a property manager at a different rental complex. The Witness D.A. said she helps the Tenant on a monthly basis and so she has been in the Tenant's rental unit on a monthly basis since the beginning of the tenancy. The Witness D.A. said the Tenant's keeps the rental unit in good condition. The Witness said she was in the unit 2 weeks ago and the rental unit was in good condition, there was no excess garbage and the unit did not smell. The Tenant added that he has had the windows open for fresh air.

The Landlord said he disputes the Witness's testimony as she picks the Tenant up to do things, but she does not go into the Tenant's rental unit. The Witness said she picks the Tenant up and then after their errands they normally go into the Tenant's unit. The Landlord said he does not agree or believe the Witness has been in the Tenant's rental unit because if she had gone into the unit she would have noticed the smell. The Witness said she has been in the Tenant's rental unit many time and it does not smell.

The Landlord said in closing that the Tenant does not clean the rental unit and it creates a smell that his family cannot live with. The Landlord did not present any evidence that demonstrated the Tenant's behaviour put the property at risk or that the Landlord's health was at risk. The Landlord said he wants to end the tenancy according to his Notice to End Tenancy with an effective vacancy date of August 31, 2012.

The Tenant's advocate said that the Landlord's claims do not meet the level of severity to warrant an eviction. The Tenant's advocate said they support this view by the testimony of the witness D.A. who said the Tenant's rental unit was in good condition and did not smell.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. The Landlord said the Tenant does not clean the rental unit and as a result there is a smell coming from the Tenant's unit which the Landlord says is significantly disturbing his family. The Landlord did not present any evidence that indicated the Tenant's behaviour has presented a health risk to his family or a risk to the property. I accept that the Landlord is annoyed with the Tenant's behaviour, but the Landlord has not provided testimony or evidence that indicates the Tenant's behaviour is more severe than an annoyance to the Landlord. Section 32 of the Act says a tenant must maintain a unit to a reasonable and sanitary condition. The Tenant said he has corrected the situation and the rental unit is clean and does not smell. As well the Tenant provided witness testimony from his previous Landlord that his rental unit is in good condition and does not smell.

Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date July 24, 2012 to be cancelled and the tenancy is ordered to continue as set out in the verbal Tenancy Agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated July 24, 2012 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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*.

Residential Tenancy Branch