



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The tenant was asked if he received the evidence from the landlord, and the tenant confirmed that he had and that he had an opportunity to review the evidence. I have considered all of the relevant evidence and testimony provided in accordance with the rules of procedure.

Issue to be Decided

- Should the Notice to End Tenancy For Cause be cancelled?

Background and Evidence

Both parties agreed that a month to month tenancy began on November 1, 2009. Monthly rent in the amount of \$398.00 is due on the first of the month. A security deposit of \$162.50 was paid at the start of the tenancy.

The landlord served a 1 Month Notice to End Tenancy for Cause (the “Notice”) on July 31, 2012, with an effective date of August 31, 2012. The tenant disputed the Notice within 10 days in accordance with the *Act*, on August 9, 2012.

The landlord listed the cause on the Notice as Tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord provided several documents as evidence prior to the hearing. The documents include complaints from other current tenants, while other complaints are from former tenants who have moved citing reasons specific to the tenant as their reasons for moving.

The tenant disputed much of the documentary evidence, denying that he behaves in the ways described in the letters. The tenant stated that others have left the rental unit due to ongoing problems with bed bugs and other problems unrelated to the tenant.

The tenant also stated that although he consumes alcohol, he does not do drugs or pick fights with others. The tenant affirmed that there was one incident where he was furious for the kitchen being closed early but that he did not damage the door to the kitchen as claimed by the landlord. The tenant does admit to yelling from time to time but denies any type of illegal behaviour.

The landlord alleges in the Notice that the tenant has engaged in illegal activity. The landlord was asked during the hearing whether the tenant has ever assaulted or threatened the landlord or his staff. The landlord confirmed that the tenant has not assaulted or threatened the landlord or his staff.

The landlord stated that the local police have attended the rental unit 8 or 9 times, however, this was disputed by the tenant. The tenant confirmed that the police did attend the night he was furious about the kitchen being closed; however, the other times the police attended were due to drug dealers in the building on a different floor and not due to the tenant. The tenant denies using illegal drugs.

The landlord stated that he has had to move other tenants to different floors due to the noise caused by the tenant. The tenant confirmed that he has had parties in his room on Friday and Saturdays up until 2:00 a.m. and that he has played his music too loud also at times, but denies doing anything illegal. The landlord did not provide evidence that noise from the tenant is in contravention of local bylaws.

Analysis

Based on the oral testimony, the documentary evidence and on the balance of probabilities, I find the following.

Both parties disputed portions of the other parties' testimony. The landlord did not apply for a Notice indicating that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, nor did the landlord allege that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The landlord did serve a Notice indicating that the tenant has engaged in illegal activity.

The burden of proof is on the landlord to prove that the tenant engaged in illegal activity, however, failed to provide specific evidence that provides specific dates, specific alleged illegal activities, and/or specific times, that would substantiate the landlord's claim in the Notice. The documentary evidence provided from other tenants, does not provide specific details of illegal activity. Furthermore, the landlord failed to provide evidence that the tenant has violated any local bylaws and denies that the tenant has ever threatened the landlord or his staff. As a result, **I cancel** the Notice, due to insufficient evidence. **I order** the tenancy continues until ended in accordance with the *Act*.

Conclusion

I cancel the 1 Month Notice to End Tenancy for Cause, due to insufficient evidence.

I order that the tenancy continues until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 11, 2012

Residential Tenancy Branch