



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MT

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy and for more time to do so. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to more time to make this application to dispute the notice to end tenancy?

Background and Evidence

On September 06, 2012, these parties attended a hearing to address the tenant's application for dispute resolution. The tenant had applied to dispute a handwritten notice to end tenancy, among other issues. The tenant had also received a proper two page notice to end tenancy for cause and had amended her application. The arbitrator dealt with the other portions of her application and informed her that she would have to make a separate application to dispute the two page notice. In his decision, he states that the tenant received the two page notice on or about September 01, 2012.

The tenant made this application on September 07, 2012 and even though the two page notice is dated August 21, 2012, I find that it replaced the handwritten notice and was dated as such. I accept that the tenant was served the two page notice on September 01, 2012 as determined by the arbitrator on September 06, 2012 and accordingly I find that the tenant made this application within the legislated time of ten days.

The notice was served for the following reason:

1. Tenant or a person permitted on the property by the tenant:
 - has significantly interfered with or unreasonably disturbed another occupant or the landlord

The landlord stated that the tenant's partner is violent and has caused problems for the landlord. The tenant argued that her partner has not behaved in a violent manner towards the landlord.

The landlord did not provide any evidence to support her testimony. She stated that she had some documents to support the reason for the notice, but had not filed them into evidence.

Analysis

In order to support the notice to end tenancy, the landlord must prove the ground alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant and/or the landlord.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord did not have adequate evidence to support her claims of violent behaviour on the part of the cotenant. Based on the contradictory testimony of both parties and in the absence of evidence to support the alleged grounds for the notice, I find that the landlord has not proven her case.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy. As a result, the tenancy shall continue in accordance with its original terms.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: September 25, 2012.

Residential Tenancy Branch