



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated August 21, 2012. Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

The burden of proof is on the landlord to prove that the tenancy should be terminated.

Background and Evidence

A copy of the One-Month Notice to End Tenancy for Cause dated August 21, 2012 was in evidence showing an effective date of September 30, 2012.

The One-Month Notice to Notice to End Tenancy indicated that the tenant had:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- seriously jeopardized the health, safety or lawful right of occupants or landlord
- engaged in illegal activity that had adversely affected the quiet enjoyment , security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenancy began on February 1, 2012. According to the landlord, an incident occurred on August 12, 2012 in which the tenant's sons had a violent altercation with another child residing in the unit above their rental suite. The landlord testified it was reported to him that the tenant's two children began banging on the ceiling with brooms and, when the child living above came down to the suite, he was then struck with one of the brooms. He was also confronted with knives that allegedly caused scratches and was then beaten by one of the tenant's sons. The landlord

testified that he was told that the assaults were inflicted while this child was out in the hallway, outside of the tenant's suite.

The landlord testified that a One Month Notice to End Tenancy for Cause was issued to end the tenancy on August 21, 2012.

The tenant testified that this incident transpired at a time when all of the parents were absent. The tenant testified that she was told that her children had banged on the ceiling with a broom in response to excessive noise being created in the suite above. The tenant testified that, from what she was told, apparently this prompted the child occupant above them to come down and enter their suite to confront her sons. According to the tenant, she was told that the child from the upper suite propped open the door with the broom, entered the premises and refused to leave their apartment, at which time the alleged violence occurred. The tenant testified that she does not condone her son's behavior and chastised them about their conduct. The tenant testified that she subsequently went to talk to police about what occurred. The tenant stated that the police did not lay any charges.

The landlord testified that, after the Notice was served on the tenant, the tenant's children continued to threaten and harass the above occupants at every opportunity and these occupants sent a letter to the landlord dated September 23, 2012 stating that they are ending their tenancy on short notice as they no longer feel safe in their home.

The landlord feels that, although the taunting and threatening of the other residents by the tenant occurred after the One Month Notice to End Tenancy for Cause was issued on August 21, 2012, this conduct should still be taken into consideration in the determination of whether or not the One Month Notice, must be cancelled or enforced. The landlord pointed out that he served has a warning letter to the tenant about the harassment allegations. The tenant stated that this warning letter was never received.

The landlord was also of the opinion that, despite the fact that the One Month Notice to End Tenancy for Cause was based only on a solitary incident, this incident involved weapons and was therefore significant enough to support a termination of the tenancy. The landlord testified that he attempted to negotiate a mutual end of tenancy agreement, but the tenant was not willing to sign the agreement.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment. This right applies to all other residents in the complex.

If the tenants engaged in the conduct exactly described, there is no doubt that this would constitute significant interference and unreasonable disturbance of other

occupants and the landlord. However, the question of exactly what transpired is not an easy determination to make with nothing more than conflicting verbal testimony by persons who were not present at the time of the actual incident, particularly as the burden of proof was on the landlord to prove that the tenancy should be terminated under the Act.

It is evident that there was a serious incident likely involving weapons, but I find that this occurrence also was partly attributable to a hostile reaction by the other resident who violated the Act as well, even though he was the victim of an assault. Physical violence is a valid cause for terminating any tenancy, but so is forcefully entering another suite without the occupant's consent. In fact, each of these actions could be considered as criminal code violations under any circumstance. However, I note that no charges were evidently laid by the police against either of these two individuals.

That being said, I find that there would not have been any face-to-face confrontation without the initial approach of the child living above, who chose to come to the tenant's door and evidently decided to enter the tenant's suite at one point. While this does not mitigate the gravity of the assault, I find that this individual had the option of leaving the proximity at any time, prior to the escalation of the situation, an alternative not open to the tenant.

With respect to the subsequent conduct of the tenant that occurred after the One-Month Notice to End Tenancy for Cause was served, I find that this would likely constitute a violation of the Act and the landlord acted properly in issuing a written warning to the tenant that such conduct will not be tolerated in future.

Given the evidence before me, I find it necessary to cancel the One Month Notice. However, the tenant is cautioned that this decision will serve as a warning and the tenant is now aware that if any similar conduct is repeated, it could function as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act.

In cancelling this Notice, I order that the tenant refrain from verbally expressing any complaints they may have directly to other residents in the complex and, in future, restrict all communications in regard to tenancy-related concerns to the landlord in written form. This includes the tenant's children, who should always bring their concerns to the tenant to handle on their behalf.

Conclusion

Based on the evidence and testimony, I hereby order that the One-Month Notice to End Tenancy of August 21, 2012 be cancelled and of no force nor effect.

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 27, 2012.

Residential Tenancy Branch