



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 18, 2012. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and that the tenant had seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

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.

Background and Evidence

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated August 18, 2012 showing an effective date of September 30, 2012, copies of two previous decisions, issued on November 24, 2011 and July 17, 2012 in which the tenant was successful in obtaining orders to cancel 2 earlier One Month Notices and other evidentiary material.

Evidence from the landlord included written statements from other residents and alleged neighbours of the property.

The testimony of the landlord about the tenant's conduct was limited to the period from July 17, 2012 to August 27, 2012, because of the fact that the landlord's allegations about this tenant's conduct prior to July 17, 2012, had already been heard and determinations were made by prior Arbitrators on that evidence with respect to the two prior applications filed by the tenant. I advised the landlord that I lack authority under the Act to reconsider matters previously dealt with and ruled upon.

The landlord testified that, following an incident of excessive noise and disruption that occurred on July 13, 2012, she received written complaints from other residents in the building and some nearby neighbours. The tenant denied receiving copies of this evidence. Most of the complaints that had been submitted into evidence were anonymous and the landlord explained that others felt intimidated by the tenant and feared reprisals. Allegations about the tenant's behavior included making excessive noise, offensive language and commentary, disruptive conduct of his visitors on and off of the property and the tenant's insistence in holding a "rummage sale" just off the property boundaries.

With respect to the issue of whether or not any written warnings were issued to the tenant by the landlord, the landlord testified that she had written to the tenant cautioning him not to have any further rummage sales, which he evidently disregarded. No copy of any warning letters were in evidence.

The landlord described one incident where a guest of the tenant's stumbled drunkenly out onto the street after leaving the residence. The landlord stated that the tenant also exhibited intimidating demeanor towards her and acted in a rude disrespectful manner in communicating with her. In addition to the above, according to the landlord, the tenant has persisted in playing loud music and having boisterous gatherings in the suite and on the common areas. The landlord stated that police attended on more than one occasion, but she was unable to obtain information about whether or not charges or fines were levied.

According to the landlord, she has lost two previous tenants in the past because of the obnoxious conduct of the tenant and another current tenant has stated that they feel that they must move due to this tenant's activities. The landlord stated that they are seeking an Order of Possession based on the One Month Notice to End Tenancy for Cause.

The tenant denied all of the landlord's allegations of noise and disturbance and pointed out that the landlord had never issued a written warning for the purported offensive conduct and that police charges or fines were never levied against him. The tenant described the neighbourhood as noisy with lots of bar patrons, closely built houses, skytrain and road traffic and commercial activity going on at all hours in the immediately proximity. The tenant acknowledged that he does make it a practice to entertain guests in the common areas, such as the porch, and pointed out that the noise level from normal social interactions such as talking, laughter and listening to music is common. The tenant stated that other residents in the same building had loud gatherings and he did not believe that the neighbours were complaining about him. With respect to the "rummage sale", the tenant pointed out that this occurred off of the property limits and

involved the municipality. In regard to the complaints of the upper-suite occupants, who kept a written chronology of their observations and concerns, the tenant stated that he was being targeted for discrimination. The tenant offered to have witnesses attest to his good character. According to the tenant, he never uses foul language, nor does he act in an intimidating way towards anyone.

The tenant also stated that, although he feels the landlord's Notice is not supported by the facts, he is currently looking for a suitable place to relocate, but is aware that this will take some time.

The tenant's position is that the landlord has not proven that the One Month Notice to End Tenancy for Cause was warranted and it should rightfully be cancelled.

Analysis

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

If the tenant had engaged in some of the conduct described, I find that there is no doubt that this would constitute significant interference and unreasonable disturbance of other occupants or the landlord. However, the question of what occurred is not an easy determination to make with nothing more than the conflicting verbal testimony before me and reports received from third parties who were not present at the hearing, particularly as the burden of proof to justify ending the tenancy is on the landlord.

I find that, whenever a tenant's conduct becomes bothersome to other occupants, the landlord has an obligation to issue a written warning to make sure that the tenant understands what complaints and allegations have been lodged and the precise nature of the conduct that is expected. The tenant also should be told that unacceptable conduct may risk termination of the tenancy if it continues. Ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour.

While I find that the tenant's lifestyle appears to conflict with other residents and that the tenant's behaviour and that of his guests may be perceived as disturbing to his fellow renters, I find that the landlord did not sufficiently prove that the tenant's annoying conduct had reached the threshold where termination of this tenancy was necessary.

Given the above, I find it necessary to cancel the One Month Notice. However, the tenant is cautioned that this decision will now serve as a written warning and the tenant is now aware that if he or any of his guests, use foul language, make gestures or

comments to or about others, yells at people or acts in an intimidating way towards the landlord or other residents, such conduct may justify terminating the tenancy.

In regard to the allegations of excessive noise, I find it likely that this complex, like many other vintage converted homes, is not very sound-proof and that normal social gatherings or animated conversations probably can be heard in adjacent suites. That fact does not excuse boisterous parties after-hours or excessively loud music, even in the daytime.

I caution the tenant that, should the landlord receive ongoing complaints of noise, or should it be found necessary for police to attend due to noise complaints caused by the tenant or his associates, this also 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 encourage the parties to communicate in written form in future with respect to tenancy-related concerns and to retain copies of all communications.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of August 18, 2012 be cancelled and of no force nor effect.

The tenant is hereby cautioned that continued disruption of the quiet enjoyment of other tenants or the landlord will place the future of this tenancy at risk.

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