



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence properly submitted prior to the hearing, and make submissions to me.

Preliminary Issue: The landlord submitted documentary evidence, including 11 written pages and a CD. The landlord explained that the CD contained footage from the security camera in the residential property.

The landlord said that they sent their evidence to the tenant on October 10, 2012, by registered mail. Section 90 of the Act states that documents served in this manner are deemed delivered five days later. Thus the tenant was not deemed to have received this evidence until October 15, 2012, which is just one business day prior to the hearing. Additionally, the tenant said that he had not received the registered mail, although he had received a notice to claim the mail.

Additionally the Residential Tenancy Branch ("RTB") did not receive the landlord's evidence until October 10, 2012, which was four business days prior to the hearing.

The Residential Tenancy Branch Rules of Procedure (Rules) require that any evidence the respondent intends to rely upon must be served on the RTB and the other party, the tenant in this case, at least 5 days prior to the hearing. The date the evidence was mailed and received are excluded from this calculation.

I therefore find the landlord's evidence was not properly submitted pursuant to the time frame in the Rules and I have excluded their evidence from consideration for this hearing.

Additionally, I would still make the decision to exclude the landlord's evidence as the CD was in a format that I was unable to open and therefore it was not accessible. The Rules also require that the digital evidence be accompanied by a written description, which was absent from the landlord's evidence.

The hearing proceeded upon the oral evidence of the parties.

I have reviewed all evidence and testimony before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

This month to month tenancy began on November 3, 2011, monthly rent is \$475.00 and the tenant paid a security deposit of \$237.50 at the beginning of the tenancy.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was delivered by posting on it the door on September 8, 2012, listing an effective end of tenancy on November 1, 2012.

The causes as stated on the Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submitted that the tenant acted in an aggressive manner towards the property manager landlord when the landlord attended the rental unit, which is on the 4th floor, to ask the tenant to stop his loud shouts.

The landlord said the tenant followed him to the first floor office, shouting invectives, and blocked the landlord's entry into the office. The tenant then physically threw the landlord against the wall, according to the landlord.

In response, the tenant submitted that it was the property manager landlord who was acting in an aggressive manner towards him, by pounding on his door and speaking improperly.

The tenant also said the landlord threatened him and was physical, which would have been shown had there also been a security camera on the 3rd and 4th floor.

The tenant said he was the one bringing this incident to the attention of the general manager and that he was issued an apology for the incident on the same day.

Analysis

Based on the foregoing oral evidence, and on a balance of probabilities, I find as follows:

Once the tenant made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

After considering all of the relevant admissible evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to prove the causes listed on the Notice.

In reaching this conclusion, the landlord submitted a version of events and the tenant submitted a differing, equally probable version of events.

Neither party had any supporting witness statements or other evidence to rely upon to support their respective positions.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the causes listed on the Notice.

Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, issued September 8, 2012, for an effective move out date of November 1, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

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* and is being mailed to both the applicant and the respondent.

Dated: October 18, 2012.

Residential Tenancy Branch