



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. To cancel a One Month Notice to End tenancy for Cause, issued on September 12, 2012.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of the filing fee from the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Should the notice to end tenancy issued on September 12, 2012, be cancelled?

Background and Evidence

The tenancy began in February 2005. Current rent in the amount of \$635.00 is payable on the first of each month. A security deposit of \$270.00 was paid by the tenant.

The parties agree that the notice was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2012.

The reason stated in the notice to end tenancy was that the tenant has:

- Tenant is repeatedly late paying rent;
- 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
- Put the landlord's property at significant risk.

The landlord's agent testified the tenant has been late paying rent nearly every month this year. The landlord stated that he reminds tenants that rent is due by placing a reminder slip in their door way. Filed in evidence is a copy of the slips. Filed in evidence is a summary of when rent was paid.

The tenant testified since the new owners took possession of the property there has never been any clear instruction on where to make the rent payments. The tenant stated there is no drop box in there building. The tenant states he pays his rent in cash and the normal practice has been that he would notify the landlord's agent via text message that the rent money was ready for pickup and the landlord would come and pick up the money when it was convenient.

The tenant testified as an example on October 1, 2012, he notified the landlord via text message that the money was ready for pickup, which was acknowledged by the landlord's agent. The tenant stated on October 7, 2012, he sent another text message to the landlord's agent asking if he had any idea when he would be coming by to pick up the rent money. Filed in evidence is the email/text message thread.

The landlord's agent testified in November 2011, there was an incident that he felt threatened by the tenant and he called the police.

The tenant testified in November 2011, the incident was he pulled the plug on a leaf blower. The tenant stated it is a municipal bylaw that leaf blowers and not to be used due to the noise. The tenant stated he has provided the landlord's agent with a copy of the bylaw on more than one occasion and the landlord's agent continued to ignore it. The tenant stated the police were not called to the incident and the police never spoke to him.

The landlord's agent testified that on September 16, 2012, there was a second incident, which the tenant said he would smash his face in. The landlord's agent stated there was no incident that provoked such a reaction and that this is just the tenant's character.

The tenant testified that due to an unfortunate family matter he was away at the being of September, 2012, and when he arrived home there was a ten day notice to end tenancy

for unpaid rent. The tenant stated he attempted to pay rent, however, was unable to get a response from the landlord's agent. The tenant stated he did receive a response for the landlord, however, the response was "this is an on site manger issue. I am not in town". Filed in evidence are copies of the messages.

The tenant testified he never threatened to smash the landlord's agent's face, however, he did threaten the landlord's agent that he was going to see him fired and told him that he was an idiot. The tenant stated he was frustrated as he was under the five day deadline to ensure rent was paid in order to have the eviction notice cancelled.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- Tenant is repeatedly late paying rent;
- 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
- Put the landlord's property at significant risk.

In this case, it appears to be the regular practice of the landlord to have the landlord's agent attends the rental units to collect rent. It is clear by the documentary evidence submitted by the tenant that he notifies the landlord's agent by text message and the agent picks up the rent money, however, that is at a later date. It would be unfair to deem these payments as late when the landlord's agent bears some of the responsible for receiving the rent money late. Therefore, I find the landlord has failed to prove the tenant was late paying rent.

The incident in November 2011, occurred eleven months ago. I find that if that incident was significant or serious or the landlord's property was at significant risk, the landlord was obligated to serve the tenant with notice to end tenancy at that time. Therefore, I find the landlord has failed to prove the incident of November 2011, is cause sufficient to terminate the tenancy.

The incident on September 16, 2012, the tenant denies that he threatened the landlord's agent with any bodily harm, however, he admitted he threatened to have him fired. The evidence was the tenant was frustrated that he was unable to pay rent, when served with a ten day notice to end tenancy.

Under the Act, the tenant is entitled to make payments to the landlord or the landlord's agent and they are obligated to accept the tenant's rent.

The text message sent by the landlord states, "I don't collect rent. This is on site manager issue, I am not in town"

[Reproduced as written].

I find such a comment from the landlord is unreasonable and only added additional stress and confusion to the matter, the landlord should have taken reasonable steps to ensure this matter was properly handled to eliminate any possible conflict between the tenant and the on site manager. I find the landlord has failed to prove the incident of September 16, 2012, is cause sufficient to terminate the tenancy.

Based on the above findings, the landlord has failed to prove the notice issued on September 12, 2012, was issued for the reasons stated. Therefore, I grant the tenant's application to cancel the notice. The tenancy will continue until legally ended in accordance with the Act.

The landlord's application is dismissed, and the landlord is not entitled to recover the cost of the filing fee from the tenant.

The collection of rent is an issue between the parties, and the parties did agree that the best method of payment for each of them would be direct deposit.

As a result the landlord is to provide the tenant with the required banking information in order for the tenant to make rent payments by direct deposit. Once the tenant receives that information from the landlord he is required to ensure rent payments are made on the first of each month in accordance with the tenancy agreement.

The tenant is cautioned if he fails to make rent payments on or before the first of each month, the landlord may have grounds to issue a new notice to end tenancy for cause.

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: October 24, 2012.

Residential Tenancy Branch