



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.

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

I heard undisputed testimony that this month to month tenancy began on November 18, 2011, monthly rent is \$600.00 and the tenant paid a security deposit at the beginning of the tenancy. There was no clear evidence of the amount paid.

The rental unit is one of a 15 unit building.

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 dated September 29, 2012, was delivered to the tenant by posting on it the tenant's door on that date, listing an effective end of tenancy on October 31, 2012.

The causes as stated on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed 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 no written evidence.

In support of their Notice regarding the alleged illegal activity, the landlord testified the tenant has been smoking marijuana in his rental unit, causing the smoke to enter adjacent rental units. The smoke affected another tenant to the point that tenant is moving out.

The landlord said that she asked the tenant to close his door when he smokes and that he refused to do so.

In response, the tenant said that he did try a couple of marijuana cigarettes as advised by his physician for pain management prior to issuing the tenant a prescription for medical marijuana, but that he has not smoked since then.

The tenant said he was not informed by the landlord that marijuana smoking was a problem or that the smoke was bothering anyone else.

As to the other cause listed on the Notice, the landlord said she was receiving phone calls from other tenants that the tenant and another occupant were fighting and slamming doors. The landlord said the police attended the residential property, but that she was not there at the time. The landlord said that she issued a note to the tenant about slamming doors sometime in the summer.

In response, the tenant said that this issue involved someone pounding on another door late one night. When the note was posted on the door, he gave the note back to the landlord, saying that he was not the one slamming the door.

The tenant said the landlord apologized several days later for giving him the note.

Analysis

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

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

In this instance, the burden of proof is on the landlord to prove the tenant significantly interfered with or unreasonably disturbed 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.

After considering all of the evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed. In reaching this

conclusion I was persuaded by the lack of written warnings to the tenant about any of the alleged infractions, with notice that a continuation of such activity could lead to the end of the tenancy.

Due to the lack of proof of written warnings or any proof that the tenant engaged in the activities complained of, the landlord's evidence of such alleged behaviour by the tenant prior to and up to the time of the issuance of the Notice was disputed verbal testimony.

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.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued September 29, 2012, for an effective move out date of October 31, 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*.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby 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: November 08, 2012.

Residential Tenancy Branch