



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 an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties, the tenant's advocate and the landlord's witnesses appeared. Thereafter the landlord's witnesses were excused from the hearing until they were individually called back into the telephone conference call hearing.

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

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

Neither party raised any issues regarding service of the application or the evidence.

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

Procedural matter-The tenant's advocate, during the course of the hearing, raised the defense that the landlord had reinstated the tenancy pursuant to the landlord accepting the monthly rent after the effective date of the Notice, without issuing a receipt with the words "For Use and Occupancy Only."

As I informed the tenant's advocate, I would still conduct the hearing and consider her argument when issuing the Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice to End Tenancy for Cause?

Background and Evidence

Although a written tenancy agreement was not entered into evidence, I heard undisputed testimony that this single room occupancy tenancy started on July 15, 2008, that the tenant's first rental unit was on the first floor, that his current rental unit is now on the third floor, monthly rent is \$450.00 and the tenant paid a security deposit of \$225.00 at the beginning of the tenancy.

The tenant's relevant evidence included the following:

- A three page handwritten statement. The statement confirmed that the tenant was disturbed by other tenant's noises and began recording the tenants and taking photos.
- Five handwritten statements from other tenants in the residential property in support of the tenant.
- A letter to the property manager from the tenant, dated November 6, 2011.
- A letter from the property manager to the tenant, dated August 13, 2009.
- A copy of the Notice.
- A photo of four other tenants, one holding a baseball bat and showing a raised fist.

The landlord's relevant evidence included the following:

- A written summary of the landlord's position in support of the Notice.
- A letter to the Dispute Resolution Officer ("DRO") for another dispute resolution file, dated September 5, 2009 regarding a dispute involving the tenant.
- A copy of a dispute resolution Decision, dated October 21, 2009, wherein the tenant was the applicant.
- A copy of an application and dispute resolution Decision regarding another tenant wherein the present tenant was a witness for that tenant. It is noted that in that Decision the applicant was evicted and the DRO mentioned a concern that the applicant was taking photos of other tenants without their permission.

- Notices to the tenant offering the tenant a room change from the first floor to the top floor.
- A letter to the tenant from the landlord, dated February 9, 2011, warning him about certain behaviour which may result in his eviction.
- A letter to the tenant, from the landlord, dated October 28, 2011, informing the tenant the landlord had received complaints about the tenant.
- A note, dated May 16, 2012, from the landlord, posted to the tenant's door, warning the tenant that he must discontinue taking photos of other tenants.
- A letter of explanation of ending the tenancy, from the landlord to the tenant.
- A statement signed by two other tenants on the same floor as the tenant.
- A statement signed by 14 fellow tenants of the residential property, alleging that they have lost their quiet enjoyment as a result of the tenant's actions.
- A copy of the Notice.

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 28, 2012, was delivered by leaving it with the tenant on that date, listing an effective end of tenancy of October 31, 2012.

The cause listed on the Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided the following testimony:

In support of his Notice, the landlord testified the tenant instigated an altercation with two other tenants who live across the hallway from him, one Sunday morning in September 2012. The landlord said that two other tenants were quietly having breakfast between 7-8 a.m. and were confronted by the tenant, who banged on the door, yelled and took photographs of the two other tenants. The landlord said that the two other tenants were engaged in everyday activities, such as cooking and having breakfast, only to be disturbed by the tenant's banging on the door and taking photographs.

The landlord said that the tenant continually acts in an aggressive manner towards her and other tenants and has for quite a long time.

The landlord said she has repeatedly warned the tenant against taking photographs of other occupants of the residential property, but he has failed to do so. This has resulted in many complaints to the landlord, according to the landlord.

The landlord further explained that the building is old and there are noises, but that she cannot restrict the tenants from enjoying everyday activities, such as cooking and conversing.

The tenant provided the following testimony in response:

The tenant acknowledged that he took photographs of other tenants, but for the reason he was attempting to have the residential property be “smoking compliant.” In explanation, the tenant said that other occupants have been violating the smoking by-law. The tenant said that he has written many complaints to the landlord about smoking violations, which have gone unnoticed.

The tenant denied receiving the note said by the landlord to have been posted on his door in May 2012, asking the tenant to stop taking pictures of other occupants, but admitted that he has been verbally cautioned by the landlord.

The tenant argued that he was the one being disturbed by other occupants and that he was taking photographs and recordings as a way of protecting himself. As proof, the tenant pointed to his photographic evidence.

Testimony of witness GG:

The witness, who lives next door to the tenant, stated that the problems with the tenant has been ongoing for at least 3 ½ years. The witness explained that the temperature in the rooms can exceed 100 degrees in the summer, which requires that his door be left open for circulation. The witness said that he has asthma and needs fresh air.

The witness said that the tenant has taken photographs of him, which was an invasion of his privacy.

Testimony of witness SJ:

The witness said that he likes to maintain his own peace and stability; however, the tenant started an altercation with the witness, aggressively approaching him about the

volume of his music. The tenant said that he was socializing with another occupant, but did turn his music down.

The witness said he has seen the tenant with a camera, but was not sure if the tenant took photographs of him.

Testimony of witness HS:

The witness said that the tenant continually invades his privacy, by taking photographs of him. One incident, according to the witness, occurred when he was in the back parking lot, drinking beer, when the tenant began taking photographs.

The witness said that every time he sees the tenant, the tenant pulls out his camera and that the tenant has been the source of problems since his tenancy began.

The witness did express that the next time he saw the tenant with a camera, he would put the camera "up his ass."

In response, the tenant's advocate pointed out that the tenant was the victim of threats.

Analysis

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

I have considered the tenant's advocate's argument that the landlord reinstated the tenancy because the landlord, on November 1, 2012, accepted rent after the effective end of tenancy date of the Notice, that date being October 31, 2012.

Residential Tenancy Branch Policy Guideline 11 provides:

A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- *whether the receipt shows the money was received for use and occupation only.*
- *whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- *the conduct of the parties.*

There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights.

In the case before me, I do not find that the landlord expressly waived the Notice.

In considering whether or not the parties impliedly waived the Notice by their conduct, I do not find that the payment of rent by the tenant and acceptance by the landlord is enough to waive the Notice and reinstate the tenancy.

I am further persuaded by the fact that both the tenant and the landlord submitted evidence for the hearing after the effective date of the Notice, in preparation for the hearing. This led me to conclude that the parties were well aware that the landlord had not impliedly waived the Notice and intended to pursue the end of the tenancy.

I therefore reject the argument of the tenant that the landlord reinstated the tenancy by acceptance of the rent.

Once the tenant made a timely 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 has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find it undisputed that, whether or not the tenant received the notice posted on his door by the landlord on May16, 2012, the tenant by his own admission acknowledged that the landlord had warned the tenant to stop taking photographs of other occupants. I also

find that by the tenant's own admission in his written evidence, he continued to take pictures of other occupants, despite the warnings and past admonitions from the landlord.

I also accept the corroborating testimony of the landlord's witnesses that the tenant has continued to engage in a course of conduct by banging on the other occupants' doors, yelling and taking photographs of the other occupants.

I find a reasonable person would regard such behaviour unreasonably disturbing and that significant interference has occurred.

In light of the above, I find the landlord has established there was sufficient cause for issuing the Notice to End Tenancy on September 28, 2012. Therefore, I dismiss the tenant's application and I find the Notice to End Tenancy is valid and enforceable pursuant to its terms.

As the landlord did not make an oral request for an order of possession for the rental unit during the hearing, as allowed under section 55(1) of the Act, the landlord is at liberty to file an Application for Dispute Resolution to seek an Order of Possession should the tenant fail to vacate the rental unit.

Conclusion

The tenant's application has been dismissed. The tenant has been ordered to vacate the rental unit pursuant to the terms of the Notice.

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 the applicant, the respondent and the tenant's advocate.

Dated: November 15, 2012.

Residential Tenancy Branch