



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on November 15, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started in March or April, 2010 as a month to month tenancy. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 in advance of the tenancy.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated November 3, 2012 by posting it on the door of the Tenant's rental unit on November 3, 2012. The Effective Vacancy Date on the Notice is December 4, 2012. The Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of other occupants, putting the landlord property at significant risk and significantly interfering with or unreasonably disturbing another tenant or the landlord.

The Landlord said there were three incidents that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). There was a noise complaint from the upstairs tenant in Late October, 2012 in which the police were called to investigate a fight in the Tenant's rental unit. The fight was between the Tenant and his daughter. The Landlord said he talked to the Tenant afterwards and they agreed this would not happen again. The Tenant

said he spoke with the upstairs tenant as well and apologized to them and the Tenant said they resolved the incident.

2). The Landlord said the second incident involved a fire outside the Tenant's daughter's window. The Landlord said it happened late in October, 2012 and involved the burning of some clothing. The Landlord said he believed the Tenant's daughter may have burned the clothing, but the Landlord said he has no proof of it. The Tenant said his daughter did not set the fire as she was not at the rental unit she was at her grandmother's place when the fire was set. The Tenant said the Landlord has no proof of his daughter being involved with the fire.

3). The Landlord said the third incident was more noise complaints about the Tenant from the upstairs tenants. The Landlord called the upstairs tenant as a Witness. Witness K.P. testified that the Tenant is not a problem, but the Tenant's daughter and guests of the Tenant and or the Tenant's daughter have been noisy and fight a lot. The Witness K.P. said there is more noise and fighting when the Tenant is away from the rental unit than when the Tenant is at the rental unit. The Witness said the police were called on two occasions for noise and fighting complaints. The Tenant said the upstairs tenant does not like his daughter and so she is making complaints about them so that the Landlord will evict him from the rental unit. The Tenant said the upstairs tenant is as noisy as he and his daughter are, but he does not complain about them each time the upstairs tenant is noisy.

The Tenant called his daughter as a witness and she gave affirmed testimony. The Witness A.S. said that the first incident was talked about and she thought it was OK now. The Tenant's daughter said it was not her who set the fire and she knows nothing about the fire. The Witness A.S. continued to say that she was not home when the fight between the two guests happened, so she does not know what happened in that incident.

In closing remarks the Tenant said the Landlord does not have any proof that his daughter caused the fire and he believes the upstairs tenant is complaining about him because she does not like his daughter. The Tenant said he talked to the Landlord and the upstairs tenants about the first incident and he thought they had resolved it and the other incidents he does not think involve him or his daughter.

The Landlord said that there have been complaints about the Tenant and occupants/guests of the Tenant's rental unit from the upstairs tenant and the police have been call in twice to deal with issues caused by the Tenant or guests of the Tenant. The Landlord said he has not given the Tenant a formal written warning about these incidents, but he has talked to the Tenant about the complaints. The Landlord continued to say he does not have proof of the daughter being involved with the fire incident, but fire it is a serious threat to the rental units. The Landlord said he wants to

end this tenancy as there are issues between the tenants and something has to be done.

The Tenant has applied to continue the tenancy and the Landlord requested to end the tenancy through his 1 Month Notice to End Tenancy for Cause dated November 3, 2012 or a mutual agreement to end the tenancy which he spoke to the Tenant about.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord and the upstairs tenants. The Landlord said he suggested a mutual agreement to end this tenancy, but the Tenant did not accept the proposal.

Consequently the parties will abide by the following decision. In Section 47 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given and the evidence and proof provided for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47 of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date November 3, 2012 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the January, 2013 rent. The January, 2013 rent is adjusted to \$600.00.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated November 3, 2012 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The January, 2013 rent payment is adjusted to \$600.00 so that the Tenant can recover the filing fee of \$50.00 for this proceeding from the Landlord.

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*.

Residential Tenancy Branch