



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause. The Application for Dispute Resolution was amended to reflect the proper name of the female Landlord, with the consent of both parties.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Tenant submitted a 3 page written explanation and a copy of the Notice to End Tenancy to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's documents and they were accepted as evidence for these proceedings.

The Tenant submitted 2 receipts to the Residential Tenancy Branch, copies of which were not served to the Landlord. As the receipts were not served to the Landlord, they were not accepted as evidence for these proceedings.

The Landlord submitted no documentary evidence to the Residential Tenancy Branch.

On one occasion during the proceeding the Tenant was placed on "mute" for approximately 3 minutes. This action was taken because the Tenant repeatedly disregarded my direction about speaking or making noise while another party was speaking. The Tenant did not disrupt the hearing again after this action was taken.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2010; that the Tenant has his own bedroom; and that he shares common areas in the rental unit with other people, who have their own tenancies.

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant, which declared the Tenant must vacate the rental unit by December 01, 2012. The reasons for ending the tenancy cited on the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The female Landlord stated that the Landlord wishes to end the tenancy, in part, because they feel that they have "lost control" of the rental unit. The female Landlord stated that the Tenant frequently expresses concerns about minor problems in the tenancy to the Landlord. The male Landlord stated that the Tenant told him that a neighbour is selling marijuana; he has repeatedly asked the Landlord to report the matter to the police; and he has been repeatedly advised that the Landlord does not wish to become involved. The Tenant stated that he does not believe he makes unreasonable demands of his Landlord.

The female Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant cooks late at night. The Landlord submitted no evidence from other occupants of the rental unit to show that they are bothered by the Tenant cooking.

The female landlord stated that she is bothered by the cooking because the smells enter their rental unit, which is above the tenant's rental unit, and make her hungry; there is a rule prohibiting cooking after 11 p.m.; and when she expressed her concerns about the Tenant cooking at an unreasonable hour, he responded by expressing his concerns about a variety of things he believed the Landlord was doing wrong.

The Tenant stated that there is no rule prohibiting cooking after 11 p.m.; that sometime in October he was asked not to cook in the early hours of the morning; and that he has not cooked after midnight since that time

The male Landlord stated that the Landlord wishes to end the tenancy, in part, because three other people living in the rental unit vacated the rental unit because of interpersonal conflict with the Tenant. He stated that the Tenant has made complaints to the police and the Landlord regarding these other occupants; that the parties frequently argued; and that he believes the Tenant is responsible for the conflicts. The Landlord submitted no evidence to show that the occupants vacated the property because they were disturbed by the Tenant.

The Tenant stated that he has had conflict with three of the people who shared the common living areas; that he has made police reports about people living in the rental unit, because they have either stolen property, been involved in the drug trade, or assaulted him; and that he gets along well with everyone else living in the rental unit.

The Landlord and the Tenant agree that on September 02, 2012 the Tenant phoned the police to report being assaulted by one of the people living in the rental unit. The Tenant stated that the police attended but did not arrest either party. The male Landlord stated that he “knows” the Tenant was the source of the conflict, although he could not articulate how he knows this.

At the conclusion of the hearing the male Landlord stated that the Tenant is a gentleman; that he pays his rent on time; that he wants things “done right”; and that he does not think he should live in a communal setting with younger people.

Analysis

Section 47(d) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if a tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; a tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; or a tenant or a person permitted on the property by the tenant has put the Landlord's property at significant risk. I find that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(d) of the *Act*.

In reaching this conclusion I was influenced by:

- The absence of evidence, such as oral or written evidence from a third party, that shows the Tenant has disturbed anyone living in the rental unit with his cooking
- My determination that a landlord smelling food cooking does not constitute an unreasonable disturbance, regardless of the time of day
- The absence of evidence that corroborates the Landlords' testimony that the Tenant makes an unreasonable number of minor complaints or that refutes the Tenant's testimony that he does not make an unreasonable number of minor complaints
- The absence of evidence that corroborates the Landlord's argument that 3 people have vacated the rental unit because of interpersonal conflicts with the Tenant
- The absence of any evidence to show that the Tenant has knowingly made false reports to the police regarding anything occurring in the rental unit
- The absence of any evidence from anyone living in the rental unit to show that the Tenant is creating conflict in the rental unit
- The male Tenant's testimony that the Tenant is a “gentleman” that wants things “done right”, which does not support the claim that he is unreasonably disturbing others.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to end this tenancy pursuant to section 47(1)(d) of the *Act*, I set aside the One Month Notice to End Tenancy and I order that this tenancy continue until it is 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*.

Dated: December 13, 2012.

Residential Tenancy Branch