



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated January 23, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

The burden of proof is on the landlord to justify the Notice.

Background and Evidence

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated January 23, 2013 showing an effective date of February 28, 2013. The landlord submitted into evidence copies of communications, written testimony, receipts, copies of banking information, a copy of an electrical certificate and a copy of the tenancy agreement.

The tenancy began on September 15, 2012 with rent of \$1,050.00. A security deposit of \$525.00 and a pet damage deposit of \$100.00 were paid.

The landlord testified that that the tenant had significantly interfered with or unreasonably disturbed the landlord of the residential property by making repeated demands for repairs, some of which were found to be unnecessary. The landlord also felt that the tenant had significantly interfered with or unreasonably disturbed the landlord by verbally abusing the landlord and by displaying hostile demeanor, such as yelling, making insulting comments and using profanities.

The landlord pointed out that, from the start of the tenancy, the tenant was uncooperative and even gave a Notice to move out during the first month. The landlord testified that the parties later resolved this dispute and they agreed to continue the tenancy.

The landlord took issue with the fact that the tenant's rent, which the parties had agreed would be paid directly to the landlord by the Ministry, was redirected by the tenant and no longer gets mailed out in the landlord's name.

The landlord testified that near the end of every month the tenant contacts the landlord and issues an ultimatum that he will withhold the rent unless the landlord makes the specific repair the tenant demands must be done. The landlord considers this conduct to be significant interference and unreasonable disturbance.

The landlord testified that all of the tenant's requests for repairs have been acted upon with short notice and the landlord made reference to the receipts in evidence, pointing out that the tenant was even given a new refrigerator. The landlord stated that the tenant's constant demands have been bothersome.

The landlord testified that, regardless of his best efforts to satisfy the tenant, the tenant still continues to acts in a belligerent manner towards the landlord at every opportunity. The landlord stated that the tenant often phones him in a rage and after cursing and hollering at the landlord, will then slam the phone down, without letting the landlord respond.

The landlord described a series of recent incidents in which the tenant suddenly called the landlord in anger and claimed that there was an emergency loss of power to a certain electrical outlet, but hung up before the landlord could ask questions or make arrangements to inspect the problem. The landlord testified that that he immediately went to the tenant's unit but found that there was no problem with the electrical circuits. The landlord testified that he was subjected to verbal abuse by the tenant at that time.

The landlord acknowledged that no written warnings have ever been issued to the tenant prior to serving him with the One Month Notice to End Tenancy for Cause.

However, the landlord feels that the persistently rude, intrusive and argumentative conduct of the tenant would still warrant a termination of the tenancy for cause.

The landlord requests that the tenant's application to have the One Month Notice to End Tenancy for Cause cancelled be dismissed and asks that an Order of Possession be issued in favour of the landlord.

The tenant stated that he has never acted in a physically threatening manner towards the landlord. The tenant pointed out that the landlord has been equally confrontational in his communications and interactions with the tenant. According to the tenant, his rent has never been withheld past the due date and has always been paid on time.

The tenant did not deny that he has demanded repairs that were necessary and did acknowledge that he may sometimes raise his voice in frustration on occasion. The tenant denied harassing the landlord or using profane language in speaking to the landlord.

Analysis

I accept that the tenant did engage in some of the conduct as described by the landlord, specifically the episodes of yelling and rudeness. However, the fact that the tenant has made numerous requests for repairs that the landlord believes are unnecessary, is not conduct that would be in violation of the Act.

I find that, although the Act does not prohibit a tenant from making complaints and requests from the landlord, there is still an expectation of civility and reasonableness on both sides.

I find that, any conduct that could be reasonably perceived by the other party as intimidating or a threat of physical harm, would qualify as being an unreasonable disturbance. I also find that frequent repeated or harassing phone calls in a short period of time, to a landlord, could qualify as significant interference.

In this instance, I find the tenant's manner of communication is not appropriate and is clearly bothersome to the landlord, but I do not find that the tenant's conduct has crossed the line as threatening nor harassing. That being said, I find that overly abrasive conduct by either the landlord or the tenant could constitute an unreasonable disturbance and significant interference if it continues or escalates.

Ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour.

Given the above, I find that, the landlord had an obligation to issue a written warning to ensure that the tenant understood that his conduct was seen as disruptive and that it should cease, failing which the conduct may place the continuation of the tenancy at risk.

Based on the evidence weighed on a balance of probabilities, I find it necessary to cancel this One Month Notice. However, the tenant is cautioned that this decision will serve as a warning. The tenant is now aware that if similar conduct, such as yelling or swearing, is repeated, this could be considered as a valid reason to justify another Notice to terminate tenancy for cause under section 47 of the Act.

In cancelling this Notice, I order that the tenant and the landlord restrict all communications with the other party to written form and to refrain from discussing tenancy issues in person or by telephone. I encourage the parties to retain copies of all these written communications.

In addition, I hereby order the following:

- The tenant and the landlord must both refrain from yelling, insulting each other, using foul language or threatening the other party with physical harm.
- The tenant must put complaints or requests for repairs in writing and allow the landlord a reasonable amount of time to respond to the request.
- The tenant will pay the rent by mailing a cheque or money order to the landlord at least five days before the first day of the month or to use an alternate payment method agreed upon by both parties.

Based on the above, I hereby order that the One-Month Notice to End Tenancy dated January 23, 2013 be cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application to cancel the One-Month Notice to End Tenancy but is issued a caution and both parties are ordered to communicate only in written form.

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: February 21, 2013

Residential Tenancy Branch

