



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This is the Tenant's application to cancel a One Month Notice to End Tenancy for Cause issued February 2, 2013 (the "Notice").

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by handing them to the Landlord on February 6, 2013.

Issue to be Determined

- Should the Notice be cancelled?

Background and Evidence

This tenancy began on December 22, 2011. Monthly rent is \$425.00, due in advance on the last day of the month. The Tenant paid a security deposit in the amount of \$212.00 at the beginning of the tenancy.

The Tenant occupies a bedroom on the upper floor of Landlord's house. The Landlord also lives in the rental property. There are two other rooms which are rented out. The Tenant does not share a bathroom or kitchen with the Landlord.

The Landlord stated that the Tenant "screams in the middle of the night and wakes up the others" and plays his stereo loudly. He testified that one of the other occupants left on December 1, 2012 because he "couldn't take it". The Landlord stated that he immediately re-rented the room to another man, who left in January, 2013, without giving notice. The Landlord stated that the other remaining occupant told the Landlord that the Tenant called him a "faggot" and followed him down the street.

The Landlord stated that he cannot rent out the other room now because the Tenant intimidates the other occupants. The Landlord is afraid that the remaining occupant will leave if the Tenant is not evicted. The Landlord stated that the Tenant also intimidates him, calling him an "old man" and cursing at him.

The Tenant stated that everything was fine when he moved in 14 months ago. He testified that he and another occupant painted and dry-walled the “middle room” at no charge to the Landlord, taking 3 days at 12 hours a day, to get it ready for a new occupant. The Tenant stated that the new occupant that moved in did not clean up after himself in the bathroom, so the Tenant had to clean up after him. The Tenant stated that he asked the new occupant to clean up after himself and that the new occupant was insulted by this and kicked his bike down the stairs.

The Tenant stated that he didn’t realize that he stereo was bothering the other occupants and that as soon as the Landlord told him that it disturbed them, he turned it off and has never turned it on again. The Tenant testified that another occupant kept disconnecting the cable.

The Tenant stated that one of the other occupants was disturbing the Tenant's sleep by knocking on the walls. The Tenant stated that he has not done anything wrong and feels that he is being railroaded by the Landlord.

Analysis

When a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice to end tenancy.

The Notice gives the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Tenant has engaged in **illegal activity** that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord provided no evidence that the Tenant has engaged in any illegal activity and therefore I find that this reason for ending the tenancy is not valid.

With respect to the other reason provided on the Notice, I find that the Landlord did not provide sufficient evidence. For example, the Landlord was very vague about when the Tenant made noise and did not provide any written statements or oral testimony from the other occupants, and in particular the remaining occupant. With the exception of one occurrence when the Tenant’s stereo was too loud, the Tenant denies all of the Landlord’s allegations. He stated that when the Landlord advised him his stereo was too loud, he turned it off and has not turned it on again since. The Landlord did not dispute this.

For these reasons, I find that the Landlord has not provided sufficient evidence that the tenancy should end for the reasons provided on the Notice.

I find that the Notice is not an effective notice to end tenancy and therefore the Tenant's application to cancel it is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Tenant's application is granted. The Notice is cancelled. The tenancy will continue until it is ended in accordance with the provisions of 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: February 28, 2013

Residential Tenancy Branch

