



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause (the “notice”) issued on February 28, 2013.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

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

Issue(s) to be Decided

Should the notice to end tenancy issued on February 28, 2013, be cancelled?

Background and Evidence

The tenancy began approximately six years ago. Current rent in the amount of \$415.20 was payable on the first of each month. During the hearing neither party could remember if a security deposit was paid.

The parties agreed that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on March 31, 2013.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

- The 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; and
- The tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that on February 19, 2013, he was unreasonably disturbed 3 or 4 times by the tenant telephoning him at his place of employment. The landlord stated the tenant was upset that there was no electricity or hot water at the rental unit. The landlord stated he was not able to go to the rental unit to investigate the problem until he was finished work and it was unreasonable that the tenant was not giving him sufficient time to attend and investigate the problem, which the problem has now been resolved.

The landlord testified that when he went to the rental unit after he finished work on February 19, 2013, the tenant was upset, yelling at him and being unreasonable and the tenant also said hurtful things. The landlord stated that the tenant also disturbed other occupants when he called them to come out of their rooms and witness this dispute.

The landlords testified that the tenant also called the police and this was the reason they stated in the notice for illegal activity as there was no basis for calling the police.

The tenant testified he rents a room in a house with twenty bedrooms and six kitchens and his tenancy agreement is separate from the other occupants. The tenant stated there are too many people and the power goes out frequently. The tenant stated he telephoned the landlord at his place of employment and told the landlord that there was no hot water or electricity and the landlord told him he was not able to come and take care of the problem until later in the day.

The tenant testified that when the landlord arrived at the rental unit, it was the landlord yelling at him and that is why he called the other occupants from their rooms as he wanted a witness to the dispute. The tenant stated he also called the police.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

- The 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; and
- The tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

In this case, the landlord believes that he was unreasonably disturbed by the tenant as the tenant telephoned him 3 or 4 times at his place of employment.

I find it was reasonable that the tenant contacted the landlord to have the landlord address the problem of no electricity or hot water in the rental unit. The landlord does not have the right to quiet enjoyment and is required to provide services that are essential to the tenant's use of the rental unit.

Further, when the landlord attended the rental unit later that day, each party claims the other party was yelling and being unreasonable. Neither party has provided any additional evidence to support their position, such a witness statement.

As a result, I find the landlord has failed to prove that the tenant has unreasonably disturbed the landlord.

The evidence of the landlord was that during this dispute the tenant called to the other occupants in the rental unit to come out of their rooms, which this action caused an unreasonable disturbance to the other occupants. The evidence of the tenant was that he only called to the other occupants because he wanted a witness to be present during this dispute.

In the absent of any testimony or any documentary evidence, such as witness statements, from any of the other occupants stating the tenants action caused them to be unreasonable disturbed. I find the landlord has failed to prove that the other occupants were unreasonably disturbed by the tenant.

The evidence of the landlord was the tenant has engaged in illegal activity by calling the police, as there was no basis for making the telephone call.

However, the term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

I find the action of the tenant placing a telephoning call to the police over a dispute is not an illegal activity even if there was no basis for making such a telephone call. Therefore, I find the landlord has failed to prove the tenant has engaged in illegal activity.

Base on the above, I find the landlord has failed to provide sufficient evidence to prove the notice was issued for the reasons stated. As a result, the notice is not a valid notice and has no force or effect. The tenancy will continue until the tenancy is legally ended in accordance with the Act.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is granted. The tenancy will continue until the tenancy is legally 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: March 13, 2013

Residential Tenancy Branch

