



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on December 16, 2012 as a month to month tenancy for the monthly rent of \$650.00 due on the 1st of each month with a security deposit of \$325.00 paid.

The tenant submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on February 1, 2013 with an effective vacancy date of February 28, 2013 citing the tenant or a person permitted on the property by 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 lawful right of another occupant or the landlord; and the rental unit must be vacated to comply with a government order.

The landlord's agent testified that the tenant did not engage in any illegal activity but that he has caused disturbances that have resulted in a loss of quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord's agent also testified that the tenant had called the police on one occasion stating that there was a fight going on but it was for no reason. The tenant acknowledges calling the police to report an excessive noise complaint.

The landlord's agent testified that the tenant has played his music too loudly and they have received complaints from their other tenant as well as being disturbed by the music themselves. The tenant submits that he does not play his music loudly and that he goes to bed around 9:00 p.m. The agent testified the landlord has verbally warned the tenant about the music but the tenant disputes that he has received any type of warning from the landlord.

The landlord's agent testified that they have received an order from a local bylaw officer requiring the rental unit to be vacated. The agent testified that the tenant was shown the order by the bylaw officer. The tenant testified that he has not seen any documents from the bylaw officer but that the officer told him that he was issuing a warning letter to the landlord. No documentary evidence has been provided by the landlord.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- c) The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

As the landlord has provided no evidence of an order issued by any level of government requiring the rental unit to be vacated, I find the landlord has failed to establish that he has this cause to end the tenancy.

As the landlord's agent confirmed in his testimony that he is not aware of any illegal activity that the tenant has been engaged in, and therefore any illegal activity that has or is likely to affect quiet enjoyment, security, safety, or physical well-being of another occupant, I find the landlord has failed to establish that he has this cause to end the tenancy.

As the tenant disputes the landlord's claims that he has disturbed the landlord or any other occupants in the residential property the burden rests with the landlord to establish the tenant has caused any disturbances. I find the landlord has failed to

provide any additional evidence or witness testimony to substantiate the claim that the tenant has caused any disturbances.

Further, even if the tenant has caused disturbances the tenant also disputes that the landlord has talked to him about any disturbances or warned him to stop causing disturbances. In the absence of any written notices to the tenant regarding any disturbances or the consequences of continuing to cause disturbances I find the landlord has failed to establish this as a cause to end the tenancy.

Conclusion

For the reasons noted above, I grant the tenant's Application and cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on February 1, 2013.

However, the tenant should be cautioned that the issuance of the above notice provides the landlord with adequate warning to discontinue any behaviour that may cause disturbances to other occupants and failure to comply may result in the landlord issuing a new notice to end tenancy.

I also note that should the landlord, in fact, have an order from local government to have the rental unit vacated the landlord may issue a new 1 Month Notice to End Tenancy for Cause and seek an order of possession based on that order.

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 06, 2013

Residential Tenancy Branch

