



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that the only evidence submitted by either party was a copy of the Notice, sent in by the tenant. Neither party raised any issues regarding service of the application or the tenant's evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

The parties were vague as to when this tenancy began, with the tenant saying that it started in February 2012, monthly rent is \$375.00, and that he paid a security deposit of \$187.50. The landlord did not disagree.

The rental unit is in a multi unit building, all single room occupancy units.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated February 28, 2013, was delivered to the tenant by leaving it with the tenant on that date, listing an effective end of tenancy on March 31, 2013.

The causes as stated on the Notice alleged that the tenant has allowed an unreasonable number of occupants in the rental unit, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submitted no written evidence.

In support of their Notice regarding the alleged illegal activity, the landlord testified the tenant and his children have been drug dealing around the residential property. When questioned as to details about this allegation, the landlord submitted that the tenant's guests are known to be drug dealers. The landlord also submitted that the tenant's children are stealing as well.

The landlord also submitted that the tenant's children are rude and vulgar to the staff and that the tenant has allowed his large number of children, said to be six children, reside in the tenant's rental unit.

The landlord said that these incidents have been going on for up to a year.

In response, the tenant said that he does have a number of children, but that only his 20 year old son lives with him, as he had no other place to live following an automobile accident. The tenant said the son has lived with him approximately a year.

The tenant denied dealing drugs or taking drugs, although he does live in a drug ridden neighbourhood.

The tenant also denied that his children, who have on occasion visited him, are rude to the landlord's staff and are not involved in drugs.

Analysis

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

Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant has allowed an unreasonable number of occupants in the rental unit, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

After considering all of the evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed. In reaching this conclusion I was persuaded by the lack of written warnings to the tenant about any of the alleged infractions, with notice that a continuation of such activity could lead to the end of the tenancy.

I was also persuaded by the lack of any evidence from the landlord, substantiating that the tenant or his children were drug dealers, such as with police records or other physical proof.

Due to the lack of proof of written warnings or any physical or other proof that the tenant engaged in the activities complained of, the landlord's evidence of such alleged behaviour by the tenant prior to and up to the time of the issuance of the Notice was disputed verbal testimony.

I also find that the tenant's 20 year old son living in the rental unit would not be considered an unreasonable amount of occupants, as the landlord provided no proof that an extra occupant was unreasonable or that the occupancy had ever been an issue for the landlord, due to undisputed testimony provided by the tenant that his son had lived there for a year.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who

bears the burden of proof, the landlord in this case, cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of “facts” is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

The version of events supplied by the tenant is just as likely as not to be true compared with the landlord’s version of events, and therefore I find that the landlord has not met their burden of proof with a balance of probabilities.

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the causes listed on the Notice.

As a result, I find the landlord’s 1 Month Notice to End Tenancy for Cause, dated and issued February 28, 2013, for an effective move out date of March 31, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Conclusion

I grant the tenant’s application seeking cancellation of the landlord’s 1 Month Notice and the Notice is hereby cancelled with the effect that the tenancy will continue until 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* and is being mailed to both the applicant and the respondent.

Dated: April 03, 2013

Residential Tenancy Branch

