



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 635 East Hastings Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated April 30, 2013, with effective date of May 30, 2013.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to this application and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

At the outset the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for the stated and sufficient reasons.

Issue(s) to be Decided

Is the notice to end tenancy valid? Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began December 18, 2012. The payable rent is \$570.00 each month.

The tenant submitted a copy of the Notice to End. The landlord did not advance or provide any document evidence to this matter. The Notice to End was issued for the following reasons;

*-Tenant or person permitted on the property by the tenant has seriously
Jeopardized the health or safety or lawful right of another occupant or the*

*Landlord; and,
-Put the landlord's property at significant risk*

*-Tenant has engaged in illegal activity that has, or is likely to:
-Damage the landlord's property
-Adversely affect the quiet enjoyment, security, safety, or physical well being of another occupant or the Landlord.*

The landlord claims the tenant smokes marijuana – as the illegal activity – but testified that the tenant has not caused damage to the landlord's property, nor as a result, has adversely affected the quiet enjoyment, security, safety, or physical well being of another occupant or the Landlord. The landlord explained this portion of the Notice was completed in error.

The landlord claims that the tenant sells items on the street, and as a result purports they are responsible for bringing cockroaches into the residential property. In addition, the landlord testified that in the last week of April 2013 the tenant was outside the residential property yelling at passersby. The landlord has determined that as a result of their conduct, the tenant is not a suitable tenant for the residential property.

The tenant disputes the Notice to End. The tenant's agent testified that the tenant has a mental health / medical condition which make them prone to occasional outbursts, but that they are not violent, nor have ever damaged the landlord's property. They state they can control themselves; and, are seeking more appropriate accommodations with advocacy and supports.

Analysis

In this type of application, the burden of proof rests with the applicant (landlord) to provide evidence that the Notice was validly issued for stated and sufficient reasons. The landlord has not met their onus in this matter. I find that the landlord has not proven their claims nor provided *sufficient* compelling evidence that the Notice to End was issued for the reasons stated in the notice to end, and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, **I Order** the Notice to End dated April 30, 2013 is cancelled, or set aside. If necessary, the landlord is at liberty to issue a new valid Notice to End for *valid* reasons.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

This Decision is final and binding on both parties.

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: June 03, 2013

Residential Tenancy Branch