



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on May 6, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on December 1, 2009 as a month to month tenancy. Rent is \$725.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$362.50 on September 28, 2009.

The Landlord said his agent served the Tenants with a 1 Month Notice to End Tenancy for Cause dated April 25, 2013 by personal delivery on April 25, 2013. The Effective Vacancy Date on the Notice is May 25, 2013. The Tenants are living in the unit and the Landlord said he wants to end the tenancy because the Tenants are disturbing and interfering with the other tenants in the rental complex.

The Landlord said the reasons on the 1 Month Notice to End Tenancy is that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord said there were a number of incidents that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). The Tenants were involved in a domestic dispute the night of April 24, 2013 which resulted in 6 complaints from other tenants in the rental complex. The Landlord submitted the complaint letters, but all the names were blocked out. The Landlord said this incident triggered the issuing of the 1 Month Notice to End Tenancy for Cause.
- 2). The Landlord presented a witness O.H. (the caretaker of the property) who testified that the Tenant found a cat that belonged to another tenant and the Tenant would not give it back to the other tenant until the police came to the rental unit.
- 3). The Landlord's witness continued to say that the Tenant tried to sell drugs to him when he first started working at the rental complex.
- 4). The Landlord said another tenant moved out of the rental unit and said that the reason he moved out was because of the noise the Tenants had made.

The Landlord continued to say that they have not issued any written warnings to the Tenants about their behaviour nor has the Landlord talked to them directly, but an outreach worker did meet with the Tenants to talk about issues in the building.

The Tenant responded to the Landlord's claims with the following statements regarding each of the points the Landlord made:

- 1). The Tenant said they did have a domestic dispute on the night of April 24, 2013 and he was noisy for about ½ and hour, but he has not done this before and he does not believe this one incident should be enough to evict them from their rental unit. The Tenant said they have been good tenants for approximately 4 years. .
- 2). The Tenant said he did find a cat in the parking lot and he asked the other tenant for proof that she owned the cat when the other tenant came to get the cat. The Tenant said he did not trust the person who came to get the cat. When the other tenant came back she had proof of ownership and the police were with her. The Tenant said he gave the cat back to the other tenant.
- 3). The Tenant said he has used drugs but he has never tried to sell drugs to the caretaker.
- 4).The Tenant continued to say that the other tenant that moved out did so because of drug related reasons not because of the Tenants actions.

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The Tenant said they have been good tenants over the last 4 years and they do not want to move. The Tenants requested that the Notice to End Tenancy for Cause be cancelled.

The Landlord said they have just taken over the building and it is his responsibility to make sure all tenants in the building are safe and have an enjoyable place to live. The Landlord said that they issued the Notice to End the Tenancy for Cause because the Tenants had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlord or the Landlord's caretaker. As well it is agreed by all parties that the Tenants did cause a disturbance on April 24, 2013. The Landlord and the Landlord's witness (the caretaker) both testified that the previous incidents to April 24, 2013 they described did not result in verbal or written warnings to the Tenants and they responded to the April 24, 2013 incident with an eviction notice. It is customary to give Tenants written or verbal warnings for behaviour that is disruptive to a rental complex so that the tenants can correct their behaviour prior to an incident that is considered severe enough to end a tenancy. The Landlord has not issued any written warnings therefore I accept the Tenants testimony that this is an abnormal incident in the 4 year tenancy.

Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date April 25, 2013 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement dated December 1, 2009.

Further it should be noted that the Landlord has now given the Tenants written notice that the Landlord does not believe the Tenants behaviour is acceptable for the rental complex.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated April 25, 2013 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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 04, 2013

Residential Tenancy Branch