



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, RP, MNDC, OLC

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 May 7, 2013.

Both parties appeared, gave 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.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy. The balance of the tenant’s application is dismissed, with leave to reapply.

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 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.

Issues to be Decided

Should the notice to end tenancy issued on May 7, 2013, be cancelled?

Background and Evidence

The tenancy began on June, 1, 2012. Rent in the amount of \$500.00 was payable on the first of each month. The tenant rents a room and shares the common areas with other occupants.

The parties agree 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 June 10, 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;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk;
- The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety and physical well-being of another occupant or the landlord;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that none of the other occupants like the tenant and that he also does not like the tenant and they want him to leave the rental unit.

The landlord testified that he has submitted letters from the other occupants to support the notice to end the tenancy. Filed in evidence letters from the other occupants.

The letter dated March 13, 2013, reads,

"I [name] feel uncomfortable when around [name] due to his attitude and behavior to myself and my guests"

[Reproduced as written.]

The letter from unit #6, not dated reads,

"On Tuesday night around 10 pm [name] has been turning the hall lights on and locking doors. Since Monday [name] has been making lots of loud noise until very late up to 3 am in the morning. [name] has all in all just been the wrong tenant to have I would strongly suggest that he be evicted as soon as possible"

[Reproduced as written.]

The letter from unit #6, dated March 13, 2013, reads in part,

"[name] has been very abusive towards the new tenant, telling her she can't use the kitchen...and just being rude and ignorant. ... [name] has not only been abusive to the tenants but also towards myself. He has been both verbally and getting physically abusive. We NEED to get him out. [name] has been also abusive towards the next door neighbor.'

[Reproduced as written.]

The letter dated March 28, 2013, in part reads,

"On March 22, 2013, the tenant from #4 was being confrontational with me and my guest [name] the tenant from #4 with his guest [name] arguing with the tenant [name]... we went upstairs to see what was happening. We went into the kitchen to eat. [name] stopped arguing with [name] and came into the kitchen and started to pick on us as he usually does. He was saying things like 'its to late to be in the kitchen', 'Why are you guys making something to eat at this time of night'...[name] went up to tenant and said 'go away' 'leave us alone'... tenant finally went away and phoned the police. When the police arrived they told the tenant that he was the aggressor and should leave the premises ... for the night. The police told me to ... if the tenant comes back to call..."

[Reproduced as written.]

When the landlord was questioned on specific details, such as dates or actual incidents the landlord would say the letters speak for themselves and could not provide any details. The landlord stated he has not done any investigation to ensure the complaints are substantiated and had not provided the tenant with any written warnings to correct any behavior or problem that has occurred.

The landlord stated that he does not like the tenant and will continue to issue notices to end tenancy until he is successful.

The tenant testified that these letters has been fabricated. The tenant stated he has never had his music on late at night and has never received any complaint.

The tenant testified that he denies the incident occurred the way the occupant wrote in their letter dated March 28, 2013. The tenant stated the kitchen is directly above his room and the occupants were in the kitchen late at night and were making a lot of noise and woke him up. The tenant stated he went up to the kitchen to ask them to stop

making noise. The tenant stated the other occupant and her guest threatened him with violence and he called the police.

The tenant testified that he has been victimized by the other occupants and the landlord. The tenant testified that the neighbor that the landlord alleged he has been abusive towards has been charged with assaulting him when he broke into the rental unit. Filed in evidence is a copy of a letter dated March 18, 2013, from Community Correction which indicates a person (WM) has been charged with assault on the tenant and is not to have any contact with the tenant.

The tenant testified that since March 2013, he does not live at the rental unit during the week as he stays at a friend's home, as he been abuse and threatened with violence. The tenant stated he is only at the unit on the weekends when his daughter comes to visit him. The tenant stated he wish he could move, however, due to medical and financial issues he is unable to at this time.

The landlord agreed that the tenant has not been living at the rental unit during the week and is only there on weekends.

The landlord writes in their summary,

“that the tenant has been threatened with violence, not only from the tenants but from a next door neighbor. This man does not know how to get along with other people....”

[Reproduced as written.]

Analysis

Based on the above, the testimony and evidence, an 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:

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;
- seriously jeopardized the health or safety or lawful right of another occupant or te landlord;
- put the landlord's property at significant risk;

- The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety and physical well-being of another occupant or the landlord;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this case, the landlord has stated several reasons in the notice and has submitted letters from other occupants that resided in the rental unit, none of these occupants attended the hearing to provide verbally testimony, or were available to be cross-examined by the tenant. The landlord was not able to provide any further details of the incidents and stated the letters speak for themselves. The evidence of the landlord was that he did not investigate the alleged complaints. The evidence of the tenant was that these incidents have been fabricated.

The evidence of the landlord was that he personally does not like the tenant and will continue to serve notices on the tenant until he is successful with ending the tenancy.

The evidence of the tenant was that he is not liked by the other occupants who reside in the rental unit and they want him to leave. The evidence of the tenant was that he been threatened with violence by the other occupants and was assaulted by the neighbor, who broke into the rental unit. The parties agreed that since April 2013, the tenant he has not been living in the unit during the week and is there only on weekends to spend time with his daughter.

In light of the above, I find landlord has failed to prove that the notice was issued for the reasons stated. Therefore, I grant the tenant's application to cancel the notice issued on May 7, 2013. The tenancy will continue until legally ended in accordance with the Act.

In this case, the landlord is aware that the tenant has been threatened with acts of violence by the other occupants. If the landlord does not take action and allows this behaviour to continue, the landlord may be found to be in breach of the Act and the tenant may apply for compensation for loss of quiet enjoyment.

Further, if the landlord continues to engage in a course of issuing notices to end tenancy without merit, the tenant may apply for compensation for harassment as that may constitute a breach of quiet enjoyment.

The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. Every tenancy provides that a tenant is entitled to quiet enjoyment of the property, from reasonable privacy, and unreasonable disturbance. The tenant is also entitled to use common areas for reasonable and lawful purpose, and free from significant interference

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause, issued on May 7, 2013, is granted. The notice of May 7, 2013 has no force or effect.

The balance of the tenant's application was dismissed with leave to reapply, pursuant to Rule 2.3.

The landlord was cautioned if he continues to allow threats of violence or acts of violence to continue, the landlord may be found to be in breach of the Act and the tenant may apply for compensation for loss of quiet enjoyment

The landlord was cautioned if he continues to issue notices to end the tenancy without merit, the landlord may be found to be in breach of the Act and the tenant may apply for compensation for loss of quiet enjoyment

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 25, 2013

Residential Tenancy Branch