



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 336688 Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for recovery of the filing fee.

The tenant and the landlord's agent appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding the service of the documentary evidence or the application.

Thereafter both parties gave affirmed testimony, 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.

I have reviewed all oral and written evidence 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 and to recover the filing fee?

Background and Evidence

The start date of this tenancy was in question; however the tenancy began in 2006 or 2007, monthly rent is currently \$704, and there was no security deposit paid by the tenant.

The rental unit is located in an apartment building, with 3 floors and 17 suites. The tenant lives in the basement level.

Pursuant to the 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 May 23, 2013, was delivered on May 28, 2013, by posting it on the tenant's door, and listed an effective end of tenancy on June 30, 2013.

The causes listed on the Notice alleged that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

The landlord's relevant evidence included a copy of written statements from some other tenants in the residential property with reflections or thoughts concerning the tenant, all dated after the date of the Notice, alleging inappropriate behaviour surrounding the use of alcohol by the tenant.

In support of issuing the Notice to the tenant, the landlord's agent said that he received a call from another tenant in the building near midnight on May 20, 2013, alerting the landlord's agent to the fact that the fire alarm had sounded due to smoke in the building. The incident resulted in the fire department being called to the premises.

The landlord stated that the source of the smoke was a pot left burning on the tenant's stove, as the tenant fell asleep while cooking. The landlord confirmed that there were no injuries or harm to the other tenants in the building.

The landlord attributed the tenant's consumption of alcohol leading to the incident with the pot, and said that this was the second such time this happened.

The landlord alleged that the tenant's problem with alcohol is putting the other tenants' safety at risk.

In response to my question, the landlord said the first incident happened at least a year and a half ago and that there was no Notice issued to the tenant.

In response, the tenant contended he had just returned home from a long road trip, and in the process of making soup, he fell asleep from fatigue. The tenant denied that he passed out from alcohol consumption.

The tenant stated that his fire alarm was not working and he had no extractor fan over his stove, which is why the main smoke alarm sounded. The tenant further submitted that the smoke had already cleared when the fire department arrived.

The tenant's relevant documentary evidence included a copy of the Notice, communication between the landlord and tenant, communication to other tenants in the building, a copy of the fire department response report, and copies of photographs of the rental unit.

Analysis

The landlord bears the burden of proving they have grounds to end this tenancy. The landlord has issued a Notice to End Tenancy listing two alleged causes, which are interrelated.

After considering all of the oral evidence submitted at this hearing and documentary evidence evidence submitted prior to this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed. In reaching this conclusion I could not rely on the witness statements of other tenants' written well after the Notice was issued by the landlord. This left me to conclude that the concerns of these tenants, whether true or not, did not lead to the issuance of the Notice. At any rate the tenant denied the contents of the witness statements and I was given no further independent proof that the allegations or concerns of the other tenants were true.

Additionally, I was not persuaded that the allegations contained in the witness statements were true as there was a 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 also reviewed the fire department response reports, which indicated that they were not dispatched until nearly 8 hours after the landlord's agent was first notified of the smoke by another tenant.

The party, the landlord in this case, has the onus of proving, during these proceedings, that the Notice is justified and supported. When the evidence consists of conflicting and disputed verbal testimony, as is the case here, then the party who bears the burden of proof will not likely prevail upon a balance upon a balance of probabilities in the absence of independent documentary evidence.

I therefore find that the landlord has submitted insufficient evidence 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 May 23, 2013, for an effective move out date of June 30, 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*.

As the tenant has been successful with his application, I allow the tenant recovery of his filing fee of \$50 and I direct that he deduct this amount for his next or a future month's rent payment in satisfaction of his monetary award.

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*.

The tenant is directed to deduct \$50 from a future month's rent payment in satisfaction of his award of the filing fee.

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: July 02, 2013

Residential Tenancy Branch