



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord orally requested an Order of Possession be provided to him during the hearing should the Notice to End Tenancy be upheld.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenancy commenced April 1, 2013 and the tenant is required to pay rent on the 1st day of every month. There is no written tenancy agreement. The rental unit is a basement suite located in an older wood frame house with a central heat source and shared air ducts. The upper suite is also tenanted.

The landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause on May 30, 2013 (the Notice) with a stated effective date of June 30, 2013. The Notice indicates the reasons for ending the tenancy are:

- Tenant or a person permitted on the property by 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

- Tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord

The landlord submitted that the reasons for issuing the Notice to End Tenancy are as follows:

1. The tenant has smoked marijuana in the rental unit which unreasonably disturbs the upper tenants as their daughter is asthmatic.
2. The tenant began lighting incense in the rental unit after the Notice was issued in retaliation and in an effort to cover up the smell of marijuana.
3. The tenant turned off breakers to the whole house on two occasions.
4. When the landlord attempted to talk to the tenant about his actions the tenant became defensive and shut the door in the landlord's face.
5. The next door neighbours complained to the landlord that the tenant has been staring at them over the fence like a "peeping Tom".

The landlord further explained that the upper tenants have been good tenants for five years and never has he received a complaint about the upper tenants until this tenant moved in.

In response to the allegations put forth by the landlord, the tenant submitted the following:

1. The tenant usually smokes marijuana outside but on two occasions he smoked in the house. The tenant is not prohibited from smoking in the house as there is no written tenancy agreement prohibiting such; however, the tenant was agreed not to smoke in the house any more.
2. The tenant does light incense for religious purposes and as a way to relax especially since the dispute arose with the upper tenants and the landlord; however, the tenant has is not home very much and the incense is limited the evening hours.
3. The breakers tripped accidentally the first time when he plugged in a faulty lamp. The second time the breakers were turned off intentionally by the tenant in retaliation to comments he overheard the upper tenant say. The tenant acknowledged his actions were wrong and agreed to never do that again.
4. The tenant felt the landlord was talking down to him and was in his face when he came to the tenant's door so he walked away and shut the door behind him.

5. The tenant denied that he is a peeping Tom but acknowledged he has looked over the fence when he heard noises next door.

The tenant opined that upper tenants and the landlord are quick to blame him for disturbances, yet he has been disturbed by the actions of the upper tenants.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reasons indicated on the Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their burden.

The only activity I heard that may be considered illegal activity is the smoking of marijuana. While it was undisputed the tenant has smoked marijuana on the property, Residential Tenancy Policy Guideline 32 provides clarification about what constitutes illegal activity. The policy guideline provides in part:

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

Although I accept that smoking marijuana in the house is disturbing to the upper tenants, since the tenant agreed to not smoke it in the house any more I do not end the tenancy for this reason. However, **I ORDER the tenant to refrain from smoking marijuana in the house at any time starting immediately upon receiving a copy of this decision.**

With respect to lighting incense, such activity is not prohibited under the tenancy agreement and it is an otherwise legal activity. Living in a multi-family building that was likely not originally constructed to be such and includes central heating and shared air

ducts inherently comes with annoyances that may include smells from incense, candles and cooking. Just as noise transference is often an issue in such buildings. The occupants should expect to encounter such annoyances due to normal living activity. Therefore, I find the tenant's use of incense is not a basis for ending his tenancy for cause.

Nevertheless, as strongly suggested to the tenant during the hearing, in order to foster a harmonious relationship with his neighbours considerate behaviour is most desirable. Having heard the upper tenants are able to smell the incense and do not find it pleasant the tenant may consider using incense as little as possible.

Turning off breakers in the building is not acceptable behaviour and the tenant's motives were purely retaliatory on at least one occasion. As the tenant promised to never turn off breakers in the future I accept his assurance and do not end his tenancy. However, I **ORDER the tenant not to turn any breakers off in the future, except in the case of an emergency, such as an imminent threat of fire, in which case the tenant must immediately report such to the landlord. This order shall take effect immediately after the tenant receives a copy of this decision.**

I find the disputed evidence as to whether the tenant slammed the door in the landlord's face or shut the door to defuse a hostile situation is insufficient to warrant ending the tenancy. I find it likely, as the landlord described, that the conversation was loud and heated on both parts. Therefore, I strongly encourage the parties to treat each other civilly and if this is not likely when dealing with each other in person, to put their communication in writing.

The allegations that the tenant has been watching the next door neighbours is not a basis for ending the tenancy as the next door neighbours are not occupants of the residential property. Rather, any issues the next door neighbours have with the tenant are to be dealt with as any other dispute between next door neighbours, which may include involving the police if the tenant's actions are illegal.

In light of all of the above, I find cancel the Notice to End Tenancy with the effect that this tenancy continues at this time. I have, however, issued two orders with this decision to the tenant. **Should the tenant violate my orders the landlord is at liberty to issue another 1 Month Notice to End Tenancy for Cause** on the ground the tenant has violated the orders of the Director or as indicated on the Notice to End Tenancy: "Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order".

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues. I have issued two ORDERS to the tenant with this decision and I have also provided suggestions to the parties with respect to avoiding future disputes.

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: July 03, 2013

Residential Tenancy Branch

