



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;

Service:

The Notice to End Tenancy is dated July 1, 2013 to be effective July 31, 2013. The effective date on the Notice is automatically corrected to August 31, 2013 pursuant to section 53 of the Residential Tenancy Act as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant did not attend the hearing but the landlord gave evidence that he was personally served with the Application for Dispute Resolution. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for cause should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

The tenant/applicants did not attend the hearing. After waiting 10 minutes, the hearing proceeded in their absence. The landlord's name was reversed on the tenant's application so the landlord requested it be amended. The amendment was granted.

The landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has allowed an unreasonable number of occupants in the unit;

- b) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized their health and safety, put the landlord's property at significant risk; and
- c) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord provided four letters in evidence. One said she had resided in the building for 6 years and this tenant is constantly having unsavory visitors even in the middle of the night, the visitors often disturb her sleep by yelling and buzzing her bell and the tenant leaves bikes in the hallway. Another long term tenant voices similar complaints of traffic day and night, visitors doing laundry late at night, sleeping in the hallways, arguing and fighting; the police have had to be called. There are commercial tenants below this tenant's unit and they also submit letters noting how the tenant and his visitors are jeopardizing the children in a day care facility and frightening patrons of a another facility as they use drugs and carry knives. A realtor notes the difficulty in renting due to the obvious unsavory visitors being present.

The tenant has submitted no documentary evidence to dispute the landlord's Notice and evidence but only noted that the accusations are untrue and he has a health issue.

Included with the evidence is the Notice to End Tenancy, warning letters, four complaint letters and a CD.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

The onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible in respect to the causes cited, namely, that the tenants or persons permitted on the property by them have significantly interfered with or unreasonably disturbed other occupants or the landlord. Four tenants in their letters support the landlord's oral sworn testimony that this tenant has frequent late night guests who yell at the window, or buzz to gain entry, engage in noisy fights, throw cigarette butts off the balcony into the commercial tenant's property and are observed using drugs. I find the weight of the evidence is that this tenant and guests significantly disturb the peaceful enjoyment of other tenants in the building as they are kept awake and are fearful for their safety when so many unknown people are entering the building.

I find the tenant did not attend or provide other evidence to support his statement that the accusations are false. I dismiss the tenants' application.

The landlord requested an Order of Possession in the hearing if the tenant was not successful. In accordance with the Act section 55(1), I find the landlord entitled to an Order of Possession.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on August 31, 2013 (as corrected). An Order of Possession is issued to the landlord effective August 31, 2013.

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: August 22, 2013

Residential Tenancy Branch

