



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant applied to cancel a Notice to End Tenancy for Cause.

The tenant, two advocates for the tenant, and an agent for the landlord (the "agent") attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties confirmed that they received evidence packages from each other and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A month to month verbal tenancy agreement was entered into by the parties on May 22, 2012. Monthly rent in the amount of \$420.00 is due on the first day of each month. A security deposit of \$210.00 was paid by the tenant at the start of the tenancy.

The tenant confirmed receiving a 1 Month Notice to End Tenancy for Cause (the "Notice") dated July 25, 2013 on July 25, 2013, with an effective vacancy date of August 31, 2013. The tenant disputed the Notice on July 26, 2013 which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following reasons on the Notice:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. The 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.

Regarding reason #1 listed above, the agent presented a letter from another tenant dated July 31, 2013, which is after the Notice was issued. The agent then presented a letter from tenant, WE, dated July 25, 2013. The July 25, 2013 letter from WE alleges that the tenant assaulted him on July 25, 2013 at 8:30 a.m. The tenant disputed the letter and testified that tenant WE grabbed her shirt and she pulled his hand off her shirt, and that was the only contact she had with tenant WE. The tenant denied that she has ever assaulted tenant WE. The agent confirmed that he did not witness the incident, although he was only four feet away at the time, as a wall was between the tenant and himself. The agent did not have any police statements or documents from the police supporting that an assault took place on July 25, 2013. The agent did not present any witnesses during the hearing to provide witness testimony.

The agent referred to a January 25, 2013 letter written by tenant WE regarding a noise complaint. Tenant WE does not list a specific date regarding the noise he is complaining about in the January 25, 2013 letter which is six months before the Notice was issued.

The agent referred to a warning letter he wrote to the tenant dated January 21, 2013. In that letter, the agent writes in part "(b)eing so drunk that you are bouncing off the wall's in the hall's and walking around the building half naked, with hardly anything covering your private part's will never be tolerated in this building." The agent stated that this behaviour continued but was unable to provide any details such as dates of further alleged incidents during the hearing.

Regarding reason #2 listed above, the agent referred to the same letter described above dated July 25, 2013 from tenant WE. The agent confirmed that he did not have any additional evidence to support reason #2 in the Notice.

Regarding reason #3, the agent confirmed that he did not have any specific details such as dates of alleged incidents or supporting evidence to support that the tenant was

engaging in illegal activity. The agent stated that he saw the tenant using drugs but had no dates or other details to provide during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

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 the onus to prove their claim and the claim fails.

Regarding reason #1 on the Notice, the agent first referred to a letter dated after the Notice was issued. I afford that letter no weight as the letter was dated after the Notice was issued, and therefore the Notice could not have been based on that letter. The agent then referred to a letter from tenant WE who writes that the tenant assaulted him on July 25, 2013. The tenant disputed that she assaulted tenant WE, and provided an equally reasonable explanation that tenant WE grabbed her shirt, and she pulled tenants WE's arm away from her shirt. The agent did not present any witness to provide testimony regarding the alleged assault, nor did the agent provide any police statement or documentary evidence that support that assault took place on July 25, 2013. The noise complaint letter was from six months prior and did not provide a specific date on which the tenant alleges noise was being caused by the tenant. Based on the above, **I find** that the landlord has provided insufficient evidence to support reason #1 on the Notice.

Regarding reason #2 on the Notice, the agent referred to the same July 25, 2013 letter from WE to support that tenant WE was assaulted by the tenant. As I dismissed reason #1 above, and without any additional evidence to support reason #2, **I find** the landlord has failed to meet the burden of proof to support reason #2 on the Notice, due to insufficient evidence.

Regarding reason #3 on the Notice, the agent stated that he did not have any dates or additional details to support that the tenant was engaging in illegal activity other than to allege that the tenant was "doing drugs". At the very least, I would expect the agent to have provided specific dates and details of the alleged illegal activity, and documentary

or witness testimony to support that the tenant was engaging in illegal activity, which the agent failed to do. As a result, **I find** the landlord has failed to meet the burden of proof to support reason #3 on the Notice, due to insufficient evidence.

As the landlord has failed to prove that the Notice was valid, **I cancel** the Notice dated July 25, 2013. **I order** that the tenancy to continue until ended in accordance with the *Act*.

Conclusion

I cancel the 1 Month Notice to End Tenancy for Cause due to insufficient evidence. I order that the tenancy continues until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 05, 2013

Residential Tenancy Branch

