



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 28, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on February 1, 2013 as a fixed term tenancy for 6 months and then continued on a month to month basis. Rent is \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on February 1, 2013.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated August 20, 2013 by personal delivery on August 20, 2013. The Effective Vacancy Date on the Notice is September, 2013 (the day is not included on the Notice). The Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reason on the 1 Month Notice to End Tenancy is that the Tenant has unreasonably disturbing another tenant or the landlord.

The Landlord said there were two main incidents that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). One night in August or July, 2013 the Landlord said the Tenant was very loud and aggressive when he was reprimanding his children for putting soap in a fish

tank. The Landlord said he was not at home at the time, but neighbours told him the Tenant was loud and aggressive and the neighbours called the police. The Landlord said the neighbours said the Police spoke with the Tenant and there were no charges laid. The Landlord said he does not live this way and he does not appreciate the Tenant causing a disturbance that requires the police to be call in.

2). The second incident was when the Tenant and his separated wife had a loud argument at the rental unit which again disturbed the Landlord, the other tenant and the neighbours. The Landlord said the Police came to the Tenant's rental unit talked to the Tenant and his separated wife and no charges were laid and no police action was taken.

The Landlord said that he believes these two incidents were serious enough to issue a 1 Month Notice to End Tenancy for Cause. The Landlord said he wants to end the tenancy as soon as possible. The Notice to End the Tenancy dated August 20, 2013 has an effective vacancy date as September, 2013 (the day is not included) so the Landlord asked what happens now as he has accepted rent for October, 2013 and issue a rent receipt reinstating the tenancy.

Further the Landlord said he did not submit any evidence and he does not have any witnesses to support the 1 Month Notice to End the Tenancy for Cause or any evidence to dispute the Tenant's application.

The Tenant said these two incidents did happen but they were not as serious as the Landlord is indicating and he is trying managing his family issues. The Tenant said the police understood the Tenant has some domestic issues to deal with, but they were not to the level of seriousness that would warrant charges or any police action. The Tenant continued to say the Landlord has not issued any written warning notices or letter about these kinds of issues. The Tenant said that the Landlord did issued a Notice on April 27, 2013 to clean up the common area in front of the Tenant's rental unit and if he did not comply the tenancy would end. The Tenant said he immediately completed the clean up and the tenancy continue as in the tenancy agreement. The Landlord said the common area still needs to be swept.

Further the Tenant said the Landlord issued the 1 Month Notice to End Tenancy for cause dated August 20, 2013 and a 10 Day Notice to End Tenancy for Unpaid Rent on September 1, 2013. The Tenant said the rent was paid on September 1, 2013 and the Landlord was incorrect in issuing a 10 Day Notice to End Tenancy for Unpaid Rent on the day the rent is due. The Landlord confirmed the rent was paid September 1, 2013.

The Tenant said in closing the Landlord has no proof that the Tenant has disturbed other occupants. As well the Tenant said he dealt with the clean up issue immediately

and he is trying to manage the family issues. The Tenant said the Landlord is harassing him and the incidents were not as serious as the Landlord is saying they were.

The Landlord said in closing that it is his property and he does not want the Tenant disturbing his family, the other tenant or the neighbours. The Landlord continued to say that he has rented units for over twenty years and has not had this problem before. Further the Landlord said that the even if he sent no evidence in to support the Notice to End Tenancy the Tenant has agreed there were two incidents, which should prove his point. The Landlord said it is his property and he views these incidents as serious enough to end the tenancy as he does not live this way and he wants the Tenant to move out.

After closing remarks from both parties the Arbitrator asked both parties if they wished to end the tenancy by mutual agreement. Both Parties said yes. Both Parties were asked under what terms they would agree to end the tenancy. The Landlord said since he renewed the tenancy by accepting the October, 2013 rent he would agree to end the tenancy at the end of October, 2013. The Tenant said he is trying to find a new rental unit but it may take a few months and he did not want to feel pressured to move out. The Parties did not come to an agreement so the Arbitrator told the parties he would take the dispute to a decision by the Arbitrator.

It should be noted the Landlord was very frustrated with the situation and that he was expected to provide evidence of the seriousness of the incidents that resulted in the Notice to End Tenancy. As a result of the Landlord's frustration he told the Arbitrator that he was a government lackey and that he should get a real job. The Arbitrator told the Landlord he was sorry the Landlord felt that way and the dispute would go to the Arbitrator's decision as prescribed under the Act.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Examples of this would be a physical attack or a proven threat on the Landlord or other occupancy or an incident that resulted in Police charges.

In this situation the incidents were concerning and inconvenient for the Landlord and the other occupants, but the incidents were not directed at the Landlord or other occupancy of the rental unit and the Tenant said he is managing these incidents and they have not repeated. As well the Landlord did not submit any evidence to support the seriousness of the incidents or provide any witness testimony to corroborate that other occupants of the rental unit were disturbed by the Tenant's actions.

In this case it is my finding that the reasons given for ending the tenancy have not been proven and have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date August 20, 2013 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated August 20, 2013 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: October 08, 2013

Residential Tenancy Branch