



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided some late documentary evidence to the Residential Tenancy Branch and this has not been considered as it was filed late and was not sent to the landlord. The parties were permitted to provide additional evidence after the hearing had concluded but this was limited to a copy of the One Month Notice. The landlord provided other evidence after the hearing had concluded despite being told at the hearing that no other evidence would be considered. The additional evidence sent by the landlord has therefore not been considered.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy set aside?

Background and Evidence

The parties agree that this tenancy started on July 26, 2011 for a fixed term of one year. The tenancy has continued after this period as a month to month tenancy. Rent for this unit is \$900.00 per month and is due on the 26th day of each month.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy on August 24, 2013 in person. This Notice has an effective date of September 26, 2013 and provides the following reasons to end the tenancy:

1) The tenant or a person permitted on the residential property by the tenant has

(i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

(ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) Jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testifies that in the last year and a half the landlord has incurred Strata fines based on the tenants actions of \$1,200.00. The landlord testifies that he appealed each of the \$200.00 fines but was overturned by the Strata Council. The tenant was sent copies of the letters from the Strata and only provided two rebuttals to these fines. The fines have been imposed because of the tenant's behavior. This includes a scuffle between the tenant and the neighbor residing above the tenant. This incident occurred when the tenant was shoving snow from her unit; the resident upstairs started to scream at the tenant because the tenant was disturbing her baby. The tenant then throw snowballs at this resident. The landlord testifies that he witnessed this incident and the police were called. A warning was given to the tenant at that time.

The landlord testifies that another incident occurred in the elevator when a confrontation between the resident from upstairs and the tenant. The landlord testifies that the

complaints against the tenant escalated when the tenant was using a small barbeque on her deck which is in contravention of the Strata rules. The tenant was also smoking on her deck. The landlord testifies that there have also been complaints about the tenant smoking marijuana.

The landlord testifies that he cannot afford to pay these Strata fines and therefore cannot afford to have the tenant living in this unit if these complaints continue and the Strata continue to fine the landlord. The landlord testifies that this is a drug free building and as such the tenant signed an agreement to this nature at the start of the tenancy.

The tenant disputes the landlord's claims. The tenant testifies that she does not smoke marijuana. However, on one occasion when the landlord was in the backyard with the tenant there were other people smoking marijuana and the landlord was aware of this.

The tenant testifies that she had not been made aware that they could not use a barbeque on the deck and they had just bought a small disposable one. When they were notified that they could not use the barbeque the tenant testifies that they stopped using it. The tenant testifies that she was not informed that she could not smoke on her patio.

The tenant testifies that two weeks after moving into the unit the resident from upstairs picked a fight with the tenant's daughter for coming in the back door late at night. Since that time the tenant testifies that this resident has harassed the tenant. The tenant testifies that this resident has complained that the tenant has a stereo blasting however the landlord has seen that the tenant does not have a stereo hooked up. The tenant disputes that the landlord could not have witnessed the incident when the tenant was clearing snow from her patio as the landlord was at the front of the building and the tenant's patio is on the side of the building. The landlord may have been able to hear the resident shouting at the tenant as the tenant shoveled snow from her patio. The tenant did tell that resident to leave her alone but the tenant denies throwing snowballs

at that resident. The tenant testifies that the police were called and the police thought that the upstairs resident was picking on the tenant and advised the tenant to avoid her.

The tenant testifies that there was an incident in the elevator with the same resident. The tenant testifies that she was going up to the second floor to visit friends and when she got into the elevator this other resident was in the lift with her little boy. The boy started to speak to the tenant and the tenant responded to him. This resident said to the tenant "don't start" and the tenant told her to relax; when the tenant got off the elevator this resident told the tenant to go 'F' herself. The tenant responded by saying that that was not a nice way to talk in front of her child. The tenant testifies that this was witnessed by the friends she was going to visit.

The tenant testifies that she informed the landlord of this incident however a meeting was set up and the tenant was not invited to put her side forward. The tenant testifies that she has not been given the chance to rebut the Strata complaints.

The landlord testifies that the Strata will not tell the landlord who has made the complaints.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist, as set out on the Notice to End Tenancy, to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has provided no evidence to corroborate his testimony that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or that the tenant has seriously jeopardized the health or

safety or a lawful right or interest of the landlord or another occupant. The landlord has provided no corroborating evidence to show that the tenant has engaged in an illegal activity. The tenant has contradicted the landlord's claims and testified that it has been the tenant that has been harassed by this other resident. Therefore in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated August 24, 2013 is cancelled and the tenancy will continue.

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

