



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Belmont Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord.

The tenant and the landlord's agents appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding the service of the documentary evidence or the application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

The undisputed evidence shows that this tenancy began on July 1, 2013, monthly rent is \$950, and the tenant paid a security deposit of \$475 at the beginning of the tenancy.

The rental unit is located in an apartment building, with 140 other tenants, according to the landlord.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause.

The Notice was dated August 28, 2013, was delivered on that date by leaving it with the tenant, and listed an effective end of tenancy on September 30, 2013.

The causes listed on the Notice alleged that the tenant had 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, has engaged in illegal activity that has or is likely to damage the landlord's property, and has not done required repairs of damage to the rental unit.

The landlord's relevant evidence included a copy of 3 written statements from some other tenants in the residential property, two dated after the Notice was issued, and the other undated, alleging inappropriate behaviour surrounding by the tenant and her son, a handwritten note to the tenant from the resident caretaker, an agent present at the hearing, and a copy of an arrest warrant for the tenant's 16 year old son.

In support of issuing the Notice to the tenant, the landlord's agent submitted that they have received 6 letters of complaints by other tenants surrounding the behaviour of the tenant, or predominantly by her son. The landlord presented that these tenants were afraid for their own safety, and that they endured yelling, shouting, slamming doors, and threats.

The landlord also submitted that other tenants were moving away from the residential property due to the behaviour of the tenant and her son.

In response to my question, landlord agent LD said that she gave the tenants three verbal warnings before issuing the Notice, confirming that no written notice was issued.

As to the alleged illegal activity, the landlord stated that this cause was issued in response to the broken window and running on the lawns; the landlord agreed that there was no illegal activity.

As to the cause regarding failure to make repairs to the rental unit, the landlord said that the tenant's son broke a window and as a result, the tenant was issued a warning, on August 8, 2013, that if the window was not fixed by August 27, 2013, the tenant would be issued a Notice to "move on."

Tenant's response-

The tenant said that she spoke with LD about the broken window and informed her that as she, the tenant, was on income assistance, and that she would fix the window as soon as she could obtain enough funds. The tenant said that LD mentioned to her that the tenant had overpaid rent by \$20 per month, and so perhaps the overpayment could be applied towards repairing the window.

The tenant said the window has not been fixed and pointed to her receipt and statement confirming the same.

The tenant said she recognized that her son exhibited inappropriate behaviour, and therefore has enrolled him in a program in another town where he is getting treatment for his difficulties. The tenant said that her son no longer is an issue, as he only visits her 2 times a week, and that he is not left alone.

The tenant denied receiving complaints from the landlord, and that she was the one calling the police in order to deal with her son.

Analysis

As the parties were informed at the hearing, the landlord bears the burden of proving they have grounds to end this tenancy for the causes as listed on their Notice to End Tenancy as required by section 11.1 of the Rules.

After considering all of the oral evidence submitted at this hearing and documentary evidence submitted prior to this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed. In reaching this conclusion I could not rely on the witness statements of other tenants written after the Notice was issued by the landlord. This left me to conclude that the concerns of these tenants, whether true or not, did not lead to the issuance of the Notice. At any rate the tenant denied the contents of the witness statements and I was given no further independent proof that the allegations or concerns of the other tenants were true.

Additionally, I was not persuaded that the allegations contained in the witness statements were true as there was a lack of written warnings to the tenant about any of the alleged infractions, with notice that a continuation of such activity could lead to the end of the tenancy.

I further find that the repair of the window has now been complete, and due to the income limitations of the tenant, I do not find that the repair was unreasonably delayed.

The party, the landlord in this case, has the onus of proving, during these proceedings, that the Notice is justified and supported. When the evidence consists of conflicting and disputed verbal testimony, as is the case here, then the party who bears the burden of proof will not likely prevail upon a balance upon a balance of probabilities in the absence of independent documentary evidence.

I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated August 28, 2013, for an effective move out date of September 30, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

I find it necessary to advise the tenant that she is now sufficiently warned that should her or her son's behaviour result in any *substantiated* written warnings, the landlord may very well issue another Notice seeking the end of this tenancy.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

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* and is being mailed to both the applicant and the respondent.

Dated: October 08, 2013

Residential Tenancy Branch

