



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODEN BEAR HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1 Month Notice to End Tenancy for Cause issued on September 4, 2013.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

On the tenant's application for dispute resolution they list the applicants as (BS) and (TR). However, upon my review of the tenancy agreement the applicant (BS) is not listed as a tenant. Therefore, I find the applicant (BS) is merely an occupant and has no legal rights or obligation under the Act. Therefore, the style of cause was amended to remove (BS) as a tenant.

Procedural issue

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the notice to end tenancy issued on September 4, 2013, be cancelled?

Background and Evidence

The tenancy began on July 1, 2013. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$425.00 was required to be paid by the tenant.

The landlord's agent stated that the tenant has been served with a notice to end tenancy as the tenant has only paid a portion of the security deposit. The tenant stated the balance of the security deposit was paid in full prior to the hearing, which the landlord was not able to confirm or deny. In any event, the security deposit is not a matter for my consideration at today's hearing.

The parties agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant is required to vacate the rental unit on October 4, 2013.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord's agent testified that the tenant and her guest are harassing the occupant that resides in the rental unit below the tenants.

The landlord's agent testified that in August 2013, the occupant's rental unit was broken into and his television was taken. The occupant informed the police that he believed that the tenant's guest (BS) was responsible for the theft. The landlord's agent stated that occupant told her that the police told him (BS) was "known" to them.

The landlord's agent testified that she was aware that the tenant's guest (BS) was arrested on an unrelated outstanding warrant, however, they have no information if there was any evidence to support that the (BS) was responsible for the alleged theft or if any charges were laid.

The landlord's agent testified that since that incident the occupant in the lower rental unit has complained of constant harassment, such as someone peering in their windows and leaving cigarette butts behind, vomiting on the roof of his car, which the tenant's guest was seen washing the vomit off, and repeated incidents of placing garbage in the occupant's garbage cans, including unwrapped dirty diapers.

The landlord's agent testified that she had not personally witnessed any of the alleged incidents and did not receive any written statements from the occupant who is claiming the harassment.

The tenant testified that they were not involved in any incident of breaking into the lower rental unit. The tenant stated that her guest (BS) was arrested, however, that was for an outstanding warrant from an incident that happening six years prior, which was a theft of an item under \$12.00. The tenant stated (BS) plead guilty and received an absolute discharge from the court. The tenant stated her guest has no other charges.

The tenant testified that she does not deny that there was vomit on the occupant's car, however, denies this was done by her or any of her guests. The tenant stated that her guest (BS) saw the vomit and washed it off the occupant's car as it was simply the right thing to do.

The tenant testified since the arrest of her guest (BS) the occupant below her has become paranoid. The tenant denies that they have ever peered into the occupants windows, or left any unwrapped dirty diapers in their person garbage. The tenant stated that her child is twelve years old, and her friend's child that comes to visit is five years old and neither of these children wears diapers.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The evidence of the landlord's agent was that the tenant or her guests are harassing the occupant in the lower rental unit. The tenant denies all allegations of harassment and believed that the occupant below is paranoid because her guest was arrested on an outstanding unrelated warrant from an incident that occurred six years prior.

The tenant admitted that the occupant's vehicle had vomit on the roof. The tenant denied that vomit was done by her or any of her guests. While the action of washing the vomit off the vehicle may be suspicious and may suggest the tenant was remorseful as suggested by the landlord. The action of washing the vomit off the vehicle could also be just as likely as suggested by the tenant that they saw it and felt it was the right thing to do.

In this case, the landlord has not personally witness any of the alleged incidents. The occupant did not attend the hearing to provide testimony and did not provide any written statement or any other supporting evidence to support the claim of harassment. As a

result, I find the landlord has failed to provide sufficient evidence to support the reasons stated in the 1 Month Notice to End Tenancy for Cause.

Therefore, I grant the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause, issued on September 4, 2013. The tenancy will continue until legally ended in accordance with the Act.

As the tenant has been successful with their application the tenant is entitled to recover the cost of filing the application from the landlord. Therefore, I authorise the tenant a onetime rent reduction in the amount of \$50.00 from a future rent payable, in full satisfaction of the award.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is granted. The tenancy will continue until legally ended in accordance with the Act.

The tenant is authorised a onetime rent reduction in the amount of \$50.00 from a future rent payable to recover the cost of the filing fee from the landlord

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 27, 2013

Residential Tenancy Branch

