



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that he received the landlord's 1 Month Notice posted on his door on October 22, 2013. The landlord confirmed that the landlord received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on November 7, 2013. I am satisfied that the parties served one another with the above documents and that the landlord served the tenant with the landlord's written evidence in accordance with the *Act*. The tenant submitted no written evidence for this hearing.

At the commencement of the hearing, the landlord made an oral request for the issuance of an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term tenancy commenced on March 1, 2013. Monthly rent is set at \$2,000.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,000.00 security deposit paid on March 1, 2013.

The landlord issued the 1 Month Notice seeking an end to this tenancy by November 30, 2013. The parties agreed that the tenant's rent was paid until the end of December 2013, awaiting the outcome of this hearing.

In support of the landlord's 1 Month Notice, the landlord entered into written evidence a number of documents, letters and emails. Included with these documents were letters of May 2, 2013, August 13, 2013 and October 22, 2013, each warning the two tenants who signed this fixed term Residential Tenancy Agreement (the Agreement) of complaints received from other tenants in this building about their behaviours. These letters advised the tenants to discontinue their disturbance of the peace and quiet enjoyment of the rental property by other tenants in this building. The landlord also submitted anonymized copies of letters and emails from other tenants in this building, which prompted each of the three letters sent to the tenants in this rental unit.

Analysis

The landlord entered into written evidence a copy of the 1 Month Notice, citing the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*
- *put the landlord's property at significant risk.*

When a landlord issues such a notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice. Ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour.

In this case, while warning letters were issued, the landlord has not supplied signed letters of complaint from any of the other tenants, as the identities of these individuals were anonymized in the evidence submitted by the landlord. In addition, the landlord said that she did not investigate the credibility of the complaints received from other tenants, nor has she produced any witnesses with any hands-on experience in support of the reasons cited in the 1 Month Notice. None of the other tenants attended the hearing and none of the landlord's staff with hands-on experience with the behaviours cited in the warning letters attended this hearing. Although the landlord said that she understands that there has been little change in the behaviours cited in the warning letters, she could offer no direct testimony regarding any of these behaviours that were subject to complaints from other tenants in this building.

For his part, the tenant testified that someone else is now sharing this rental unit with him and that corrective action has been taken regarding the complaints cited in the landlord's warning letters. He said that both of his neighbours on either side have told him that they have no issues with his tenancy. He was willing to call one of these tenants as a witness but was unable to locate their phone number at the hearing. The tenant also said that this is a noisy building and that behaviours attributed to his rental unit are originating somewhere else and not from his rental unit. He noted that some of the periods in question were for periods when no one was staying at his rental unit as his work takes him away from the rental unit for extended periods of time.

I find there was insufficient evidence from the landlord to allow me to find that the tenant(s) has significantly interfered with or unreasonably disturbed another occupant or the landlord or put the landlord's property at significant risk. I find that the landlord did not sufficiently prove that the tenant's conduct had reached the threshold where termination of this tenancy was necessary.

Given the above, I find it necessary to cancel the 1 Month Notice. However, the tenant is cautioned that this decision will now serve as a further written warning and the tenant is now aware that recurrence of episodes that significantly interfere with or unreasonably disturb others in this building may justify terminating the tenancy for cause. I caution the tenant that, should the landlord receive ongoing complaints of noise, or should it be found necessary for police to attend due to noise complaints caused by the tenant or his associates, this also could function as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act.

Finally, I also note that the landlord appears to have accepted the tenant's monthly rent payment for December 2013, after the 1 Month Notice was to have taken effect. The landlord did not provide testimony that this payment was received for anything but rent, which would effectively have reinstated his tenancy and nullified the 1 Month Notice.

As the tenant has been successful in this application, I allow the tenant to recover his \$50.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice is cancelled and is of no force or effect.

In order to implement my decision to award the tenant the recovery of his \$50.00 filing fee from the landlord, I order the tenant to reduce his next scheduled monthly rent

payment by \$50.00. The tenant's monthly rent reverts to the original amount stated on his tenancy agreement on the month following this one-time rent reduction.

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: December 19, 2013

Residential Tenancy Branch

