



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause (the, "notice") issued on October 28, 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 at the hearing

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 October 28, 2013, be cancelled?

Background and Evidence

The tenancy began on February 2010. Current rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on December 15, 2013. Neither party filed a copy of the notice to end tenancy as evidence.

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

The landlord testified that she wants the tenant to move-out of the rental unit, as she can no longer tolerate the tenant yelling at her, which started about three years ago. The landlord stated the last incident which resulted in the notice being issued was approximately 6 weeks ago when the tenant and his friends were in the backyard and they were drunk. The landlord stated when she approached the tenant he started to yell at her and he raised his arm as if to strike her. The landlord stated she did not call the police.

The tenant testified that he denies yelling at the landlord. The tenant stated three weeks ago, he arrived home with a few of his friend at about 3:30pm as they were there to help him cleanup and cut the back lawn, which is a large field. The tenant stated he tries to keep the field maintained as people often throw items in the field making it unsafe. The tenant stated that the landlord approached him stated that she wanted to talk to him as she felt his friend was cutting the grass unsafe.

The tenant testified that he was not paying a lot of attention to her as they were trying to get the work done as quickly as they could as it would soon be getting dark, and this was the first day the lawn was not saturated with water and was cut able.

The tenant testified that the landlord was walking away, when his friend found a rake and a board with a nail sticking out, which was hiding in the long grass, and he yelled out that is why we needed to get the yard cleaned up and pointed to these items. The tenant stated he never yelled at her or raised his hand with any suggestion of violence as he was merely pointing to the items found.

Analysis

Based on the above, the testimony and evidence, and 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

In this case, each party provided a different version of events of the incident that occurred in October 2013. In this case, the landlord has the burden of proof on the civil standard, that is, a balance of probabilities.

While under no circumstance is violence acceptable and would be grounds to end the tenancy if proven, I find in the absent of any further evidence, such as a police report as

it would have been reasonable for the landlord to contact the police had the landlord felt the tenant's action was a threat of violence or any other witness to support her version of events.

Further, the landlord claimed that the yelling commenced three years prior, I find the landlord has also provided insufficient evidence as there was no further details provided, such as specific dates or incidents.

Therefore, I grant the tenant's application to cancel the one month notice to end tenancy issued on October 28, 2013. The tenancy will continue until legally ended in accordance with the Act.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is granted. The tenancy will continue until legally 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*.

Dated: December 16, 2013

Residential Tenancy Branch

