



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the tenants to cancel a 1 Month Notice to End Tenancy for Cause, to recover the filing fee for the cost of making the application and for 'Other' issues of which none were identified throughout the hearing.

The landlord confirmed receipt of the tenant's application and documentary evidence for this hearing as well as the Notice of Hearing documents. As a result, I find that the tenants served the landlord with the required documents in accordance with the *Residential Tenancy Act* (referred to as the "Act").

The tenants appeared for the hearing with an advocate; the male tenant provided all the affirmed testimony and the tenants' advocate made a number of submissions during the hearing. The tenants also provided documentary evidence in advance of the hearing which the landlord confirmed receipt of. The landlord named in this application also appeared for the hearing and confirmed that he was an agent of the landlord and is also the caretaker of the building. The landlord provided affirmed testimony during the hearing but provided no documentary evidence prior to the hearing.

Issue(s) to be Decided

Have the tenants established that the notice to end tenancy for cause ought to be cancelled?

Background and Evidence

The male tenant testified that this month to month tenancy began on November 1, 2012. Rent in the amount of \$625.00 is payable by the tenants to the landlord on the last day of each month. The landlord testified that he took on the role of caretaker and the landlord's agent in May, 2013.

The landlord testified that on December 23, 2013 a note had been put on his door by one of the residents in the building, who resides below the tenants, complaining of threatening behaviour by the tenants. The landlord testified to the contents of the note which stated that the male tenant had approached the resident regarding the resident's banging on the ceiling the previous night. The note went on to say that the male tenant told the resident that if he did not stop the banging, he would come looking for him. The resident told the male tenant that he should control his child because the child was banging on the floor which was causing him disturbance; the male tenant replied by saying that under no circumstances could the resident tell him how to control his child. The resident then asked the landlord to call the police as he had been threatened.

The landlord testified that he called the police and informed his supervisor who told him to issue a notice to end tenancy for unpaid rent and a notice to end tenancy for cause. The landlord decided that as it was Christmas they would not issue a notice for unpaid rent, but would issue the notice to end tenancy for cause. The landlord testified that the police arrived an hour later and took a statement from the resident.

The police then accompanied the landlord to the tenants' rental unit, at which point the tenants were personally served with a 1 Month Notice to End Tenancy for Cause. The police did not talk with the tenants. The notice was provided as evidence and states that the expected date of vacancy is January 23, 2014 and the reason for ending the tenancy is because the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and, they have engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The landlord testified that based on this incident, this was the reason why the tenants were issued with the notice to end tenancy. The landlord provided the police file reference number and confirmed that since the time of this incident no other issues have occurred between the tenants and the resident. However, the landlord still seeks to end the tenants' tenancy based on this incident.

The tenants' advocate submitted that the landlord's application was unsubstantiated and that the landlord has not met the burden of proof for his case. The tenants' advocate submitted that the incident referred to by the landlord in the hearing and on the resident's note was a chance encounter and that the male tenant did not seek out the resident to make such a threat; instead it was the resident who continually bangs on his ceiling, which is the tenant's floor, whenever the tenants' daughter walks or plays on the floor. The tenants' advocate also pointed out that the noise that the resident referred to as causing him a disturbance, is one that is reasonable and one that should be

expected in a building housing a large number of occupants. The advocate pointed out that the landlord has simply taken the word of the resident without any type of investigation. The tenants submitted several statements from other residents in the building which indicate that the tenants are very well liked and respected in the building.

The male tenant testified that he had finished work and saw the resident by the dumpster and approached him to talk about the resident banging on his ceiling. The male tenant testified that he asked the resident to stop and if he did not then he would address the issue another way, meaning with the landlord, and no threats were made. The male tenant stated that his daughter does create noise when she walks and plays on the floors of the rental unit but this is reasonable and the tenants try to do everything they can to minimise such noise by having their daughter play in a bouncer and off the floors, but this should not prevent her from walking on the floors.

When the landlord was questioned as to why he had not investigated the incident or approached the tenant, the landlord stated that he did not need to as the tenants had made threats in the past which had been witnessed by him. The tenants denied these allegations of threats and the tenant's advocate pointed to the lack of supporting evidence in relation to the previous threats.

Analysis

When a landlord issues a tenant with a 1 Month Notice to End Tenancy for the reasons in this case, the landlord bears the burden of proof in showing the reasons why the notice was issued and must supply sufficient evidence to prove the notice should be upheld.

The landlord has not provided sufficient supporting evidence to substantiate the reasons why the notice to end tenancy was issued and relies solely on his affirmed testimony as evidence for this case. The verbal testimony provided by the landlord regarding the reason for the notice to end tenancy is disputed by the tenants and therefore this case comes down to one person's word against the others.

This notice to end tenancy centers around a dispute between the tenants and a resident of the building and there is no sworn or notarised statement from the resident regarding the incident in which the resident was allegedly threatened by the male tenant; neither was the resident made available for the hearing to provide affirmed testimony and therefore in a position to be cross-examined on the potential evidence that could have been provided. The lack of any documentary evidence, such as breach letters for threats made by the tenants in relation to the landlord's testimony for the incident in

question, and prior incidents, does not convince me that the landlord has met the burden of proof in this case.

While the landlord did provide the police file reference number in verbal testimony, I find that this number alone holds little evidentiary value as the police took no action against the tenants and it is not known whether an allegation was made to them by the resident and what investigation they undertook. I also find it concerning that if the resident felt threatened by the male tenant's words, then why did he not call the police himself and why this was left to the landlord. Again, the resident was not provided as a witness by the landlord for the hearing to submit to cross-examination.

In this case, I find that the landlord's evidence is no more compelling than the tenants' evidence and, therefore, the landlord has not met the burden of proof in this case.

Conclusion

For the reasons set out above, I therefore, cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord to the tenants on December 23, 2013. The tenancy will continue until it is ended in accordance with the Act.

As the tenants have been successful in cancelling this notice, I award the tenants \$50.00 for the cost of this application pursuant to Section 72(1) of the Act. The tenants may recover this cost by deducting \$50.00 from their next rent payment.

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: February 14, 2014

Residential Tenancy Branch

