



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Interim Decision

Dispute Codes: CNC, CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a *One-Month Notice to End Tenancy for Cause*.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter

After serving the *One Month Notice to End Tenancy for Cause* on January 21, 2014, and prior to the hearing date scheduled for March 10, 2014, the landlord then issued and served a *Two Month Notice to End Tenancy for Landlord's Use* dated February 24, 2014. The 2-Month Notice was to end the tenancy on April 30, 2014 because the unit will be occupied by a close family member.

On February 28, 2014, the tenant submitted a copy of this 2-Month Notice into evidence and indicated at the hearing that she was disputing this Notice in addition to the original application disputing the 1-Month Notice for Cause. The tenant is alleging that the *Two Month Notice to End Tenancy for Landlord's Use* was issued in bad faith and therefore should be cancelled.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find that the second Notice, that is the *2-Month Notice for Landlord's Use* was issued just before the tenant's hearing dealing with their dispute over the *One Month Notice to End Tenancy for Cause* was scheduled to be heard.

The normal procedure for an applicant to include both Notices in the hearing would have been for the tenant to amend their original application to also include their request to dispute the second Notice, in addition to the first 1-Month Notice, and serve this amendment along with evidence to the respondent landlord. This would have afforded the landlord an opportunity to submit their own evidence on the second issue, the *Two Month Notice to End Tenancy for Landlord's Use*.

However, I find that the amount of time left before the hearing date, did not allow sufficient time for the respondent landlord to submit their evidence with respect to the issue of the 2-Month Notice and also the application was not properly amended by the applicant tenant.

For this reason, I hereby find it necessary to sever the tenant's dispute of the *Two Month Notice to End Tenancy for Landlord's Use* and adjourn this issue to be heard separately.

The parties are directed to submit any evidence relating to the Two Month Notice to End Tenancy for Landlord's Use to the Residential Tenancy Branch and also to each other immediately.

The portion of the dispute relating the *Two Month Notice to End Tenancy for Landlord's Use* will be heard at **9:00 a.m. on Friday March 14, 2013.**

Today's hearing will deal only with the tenant's request to cancel the *One Month Notice to End Tenancy for Cause* dated January 21, 2014.

Issue(s) to be Decided

- Should the *One Month Notice to End Tenancy for Cause* be cancelled?

Background and Evidence

The tenancy began in August, 2013, but the tenant had been a resident in the complex under a different tenancy since 2005. The current rent is \$700.00.

The landlord testified that the tenant has engaged in anti-social behavior including bothering other residents, verbal confrontations and a pattern of conduct that has resulted in numerous complaints from other residents and two adjacent tenants terminating their tenancies.

The tenant argued that she had been subjected harassment by a former resident and is now being taunted by friends of this individual who still live in the complex. The tenant testified that she is particularly vulnerable to being victimized because of a medical condition that affects her cognitive ability. The tenant's position is that she has done nothing to warrant a termination of the tenancy.

The landlord acknowledged that all residents in the complex are entitled to quiet enjoyment under the Act. However, the ongoing conflicts between the tenant and other occupants appear to be escalating.

The landlord testified that she is not in any way biased against the applicant tenant, but feels that this tenancy must end to avoid losing more long term residents because of the tenant's interference. The landlord feels that the tenancy must be terminated.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 47 of the Act permits a landlord to terminate a tenancy by issuing a One-Month Notice to Notice to End Tenancy for Cause in cases where a tenant or a person permitted on the residential property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

In situations that involve two tenants, I find that there is an expectation under the Act that the landlord will conduct a thorough and unbiased investigation to determine whether one tenant, or the other, or both, are engaged in conduct that violates the Act or Agreement. Only then should a landlord take further action depending on the results.

In this instance I find that the landlord did make an honest effort to intervene to a degree trying to find a solution but was not successful in preventing further conflicts.

I do find that some of the alleged actions by the tenant, if true, may have been perceived as bothersome. At the same time, I find that some of the allegations the tenant made about the conduct of the other occupants' may be equally bothersome.

That being said, I am not prepared to enforce the landlord's One-Month Notice to End Tenancy for Cause based on the information and evidence that has been presented during this hearing.

Given the above, I hereby cancel the One-Month Notice to End Tenancy for Cause. The landlord is ordered to instruct the tenants that they must:

- Refrain from communicating directly with one other in any form,
- Direct all communications to the landlord in writing.

Should the tenant fail to follow the above orders, the landlord is at liberty to make a future application for dispute resolution with regard to this or any other tenancy matter.

I hereby order that the One-Month Notice to End Tenancy for Cause, dated January 21, 2014, is cancelled and of no force nor effect.

Having found that the tenant's subsequent request to also cancel the *Two Month Notice to End Tenancy for Landlord's Use*, warrants an adjournment, I hereby order that this second dispute be reconvened in accordance with section 74 of the Act.

I have enclosed Notices of Reconvened Hearing with this decision.

Interim Conclusion

The tenant is successful in the portion of their application seeking to cancel the One-Month Notice to End Tenancy for Cause. The portion of the tenant's application seeking to cancel the Two Month Notice to End Tenancy for Landlord's Use is adjourned to be reconvened and heard at a separate hearing.

This interim 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: March 10, 2014

Residential Tenancy Branch

