



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a notice to end tenancy for cause.

The Tenant appeared for the hearing with an advocate. An agent (who was also the building manager) appeared to represent the Landlord’s company named on the Application.

No issues were raised by the parties in relation to the service of the Tenant’s Application and the Notice of Hearing documents which were served by registered mail.

The Tenant provided a copy of the notice to end tenancy for cause as written evidence. The Landlord provided a one page handwritten letter which was signed by three parties and dated May 8, 2014, as written evidence prior to the hearing. The Landlord’s agent stated that he had a large amount of written evidence before him which should have been provided to the Residential Tenancy Branch by the Landlord; however, this evidence was not before me and there was no record of this being received by the Residential Tenancy Branch. Furthermore, the Tenant’s advocate confirmed receipt of only the one page of written evidence served to the Tenant prior to the hearing.

The hearing continued and the evidence provided by the parties which met the Rules of Procedure was carefully considered in this decision.

Issue(s) to be Decided

Has the Tenant established that the notice to end tenancy for cause ought to be cancelled?

Background and Evidence

The parties agreed that this month to month tenancy began on October 15, 2013. Rent is currently payable by the Tenant in the amount of \$550.00 on the first day of each month. At the start of the tenancy the Tenant paid the Landlord a security deposit in the amount of \$275.00 and a written tenancy agreement was completed between the Tenant and the previous Landlord.

The Landlord served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") by attaching it to the Tenant's door on April 13, 2014. The Notice, which was provided as evidence for the hearing, shows the expected date of vacancy of May 31, 2014 and the reason for ending the tenancy is because the Tenant is alleged to have significantly interfered with or unreasonably disturbed other occupants and the Tenant is alleged to have engaged in an illegal activity that has adversely affected the quiet enjoyment, security, safety and well-being of another occupant or the Landlord.

The Tenant confirmed receipt of the Notice on April 13, 2014 and made his Application to cancel the Notice on April 17, 2014.

The Landlord's agent testified that the Tenant had engaged in a course of action that had created disturbance to the other residents of the building. This was done through the Tenant's intoxication, noise disturbances and yelling from his deck.

The Landlord's agent was questioned about the letter dated May 8, 2014 which had provided as evidence by the Landlord and whether this related to an incident on May 8, 2014 or whether the statement was written on May 8, 2014. The Landlord's agent replied that the letter talked about several disturbances that occurred before the Notice was issued. The Landlord's agent then stated that he had no further evidence to present apart from his testimony and the letter for the hearing.

The Tenant denied causing any disturbance in the building and submitted that he was not informed about any disturbance either in writing or verbally by the Landlord. The Tenant submitted that the alleged complaints on the letter provided by the Landlord for this hearing come from Tenants who moved in on May 1, 2014 which was well after the time the Notice was issued to him.

The Landlord's agent was unable to verify the date that the complainants in the letter started their tenancy.

Analysis

I find that the Notice provided as evidence for this hearing was issued to the Tenant in the correct form and contained the required contents as required by the Act. I also find that the Notice was served and received by the Tenant on April 13, 2014 and that the Tenant disputed the Notice within the time limits afforded under Section 47(4) of the Act.

When a Landlord issues a Tenant with a Notice for the reasons in this case, the Landlord bears the burden of proof in proving the reasons, on a balance of probabilities, as to why the Notice was issued and must supply sufficient evidence that it should be upheld.

In this case, I find that the Landlord has not provided sufficient supporting evidence to substantiate the reasons why the Notice was issued and relies on the Landlord's agent testimony and one complaint letter signed by three Tenants which the Tenant disputes. The authors of this letter were not made available for this hearing for cross examination and I find that the Landlord's evidence is too weak for me to uphold the Notice.

Therefore, I find that the Landlord's evidence is no more compelling than the Tenant's evidence and the Landlord has not met the burden of proof in this case.

Conclusion

For the reasons set out above, I cancel the Notice dated April 13, 2014 and the tenancy will continue until it is ended in accordance with the Act.

However, I encouraged the parties during the hearing to work with each other to promote a successful tenancy.

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: June 25, 2014

Residential Tenancy Branch

