



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This is an application to cancel a Notice to End Tenancy that was given for cause.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties and the witnesses the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether to uphold or cancel 2 Notices to End Tenancy that were given for cause.

Background and Evidence

On May 26, 2014 the landlord served the tenant to one-month Notice to End Tenancy for cause.

The reasons given on the first notice are as follows:

- tenant has engaged in 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.
 - jeopardized the lawful right or interest of another occupant or the landlord.

The reasons given on the second notice are as follows:

- tenant or persons permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlords testified that:

- They have had ongoing complaints about noise coming from the tenant's rental unit.
- The tenant is been warned numerous times that the noise coming from his unit was disturbing other tenants yet they continued to receive complaints about the noise coming from his unit.
- They have had one tenant move out of the rental unit due to the noise, and they have two other tenants threatening to move out if the noise does not stop.
- The tenant has late-night parties that include loud music and loud talking and it is unreasonable for the other tenants in the rental property to have to put up with such ongoing disturbances.
- They had previously given the tenant a Notice to End Tenancy for disturbing others and although that notice was canceled by an arbitrator, the arbitrator stated in the decision that he was satisfied that the tenant's guest did disturb the landlord's agent and his wife, however he also found that the one incident was insufficient to end the tenancy.
- The arbitrator further stated in this decision that the tenant is strongly cautioned that he has been warned that any further allegations of disturbance by the tenant or his guests may be investigated by the landlord and, if found to be substantiated could lead to an end of his tenancy.
- As you can see from the letters of complaint, there have ongoing disturbances by the tenant.
- They are therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The witness for the landlord's stated:

- He lives in the unit above the applicant and the noise from the applicant's rental unit is very frequent, at least three or four times a month.
- When he asked the tenant to stop making the noise it does not help, the noise does not stop.
- If this noise continues he is going to give his Notice to End Tenancy and vacate the rental unit as he finds the noise too disturbing.

Under questioning by the advocate for the tenant, the witness stated that:

- He does not know how many times he has written complaint letters, but it has been several.
- He has spoken to the tenant four or five times and the tenant always says he will deal with the problem, but then the noise continues.
- When asked how his demeanor was when speaking to the tenant, the witness stated that the first few times he was quite calm when speaking to the tenant, however since the tenant's behavior did not change, he did become somewhat aggressive, however at no time did he swear, taunt, or follow the tenant around the building.
- When asked if he had filed complaints about any other tenants he stated he had not.

The advocate for the tenant argued that:

- Of the three complaint letters supplied by the landlords in their hearing package, one of the complaint letters was from two years ago, the second complaint letter of January 8, 2014, was filed two days after the landlords have given the tenant a warning, and the third was from April 3, 2014, almost 2 months before the Notice to End Tenancy was given.
- They do not believe that the first letter from two years ago should be taken into consideration as it is so long ago.
- They wonder if the landlords solicited the second complaint letter, since it was not written until two days after the warning was given to the tenant.
- And with the third letter of complaint they wonder why, if it was disturbing the other occupants so much, that the landlords did not give a Notice to End Tenancy until approximately 2 months later.
- Further they believe that the complaints coming from the landlord's witness who lives in the unit above the tenant, are the result of a personality conflict between the tenant and the witness, and may be motivated by prejudice.
- They also believe that the complaint letter from the occupant of unit 106 should be totally disregarded as it was written after the tenant had already applied for dispute resolution and well after the Notice to End Tenancy was given, so they fail to see how it relates to the Notice to End Tenancy.
- They therefore ask that the Notice to End Tenancy be canceled and that this tenancy be allowed to continue.
- They have a support letter from the tenant in unit 112 who states that she has heard no noise from the rental unit, nor fighting, and that any noise from the balcony ends by 11:00 PM.

In response to the tenant's testimony the landlord's testified that:

- The reason why some warnings are given to the tenant before they receive the complaint letter is because on numerous occasions the other tenants submit a verbal complaint first that is then followed up by a written complaint.
- This tenant takes no personal responsibility for any of his actions, and appears to believe that he is not bound by the rules of the building.

Analysis

First of all I want to state that I have not considered the tenant's evidence package that was received by our office on June 5, 2014, as that package was not served on the landlord.

Secondly it is my finding that the landlord has shown that the tenant has been unreasonably disturbing the other occupants of the rental property.

The tenants advocate has argued that he does not believe that the three complaint letters justify ending this tenancy, however it's my finding the three complaint letters, combined with the witness testimony from the tenant in 208, show a pattern of disturbances being caused by this tenant.

Although the tenant alleges that the testimony from the witness in 208 is a result of prejudice, they have supplied insufficient evidence to support that allegation.

I also accept the building manager's sworn testimony that they have had numerous verbal complaints as well.

With regards to the complaint letter from the party in unit 106, it is my finding that that letter is relevant to the issue even though it was written after the notice was given, as it supports the landlord's allegations of ongoing noise from the rental unit.

The tenant has been warned numerous times and appears to have ignored those warnings.

I therefore am unwilling to cancel this Notice to End Tenancy and since the landlords have requested that I do so, I will be issuing an Order of Possession to the landlords

Conclusion

This application to cancel a Notice to End Tenancy is dismissed and I've issued an Order of Possession to the landlords for 1:00 p.m. on July 31, 2014.

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: July 23, 2014

Residential Tenancy Branch

