



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47.

Service:

The Notice to End Tenancy is dated August 5, 2014 to be effective September 30, 2014 and the tenant confirmed receipt. The landlord agreed he received the tenant's Application for Dispute Resolution which was filed on August 18, 2014 and in time to dispute the Notice. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy? Or is the tenant entitled to relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in October 2012, it is now a month to month tenancy, rent as subsidized is \$510 per month (market rent \$1300) and a security deposit of \$450 was paid.

The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- b) The tenant has seriously jeopardized the health or safety or other lawful right of another occupant or the landlord.

The landlord provided a number of letters in evidence plus 7 incident reports involving the Police. Five witnesses who are occupants of the complex attended the hearing to give evidence of behaviour of the tenant which significantly interfered with their peaceful enjoyment. This complex is described as 29 units centering around a playground where the children of tenants play. The witnesses gave evidence of incidents where the tenant became very agitated, smelt of alcohol, appeared drunk and acted aggressively toward one of them whom he thought had made a false report to the Police. He apologized later but the tenants say they are very alarmed by his aggressive stance, his yelling and swearing and use of alcohol especially where children in the playground area can overhear him. The landlord said that verbal complaints regarding the tenant's use of alcohol and unreasonable behaviour have been made for the past 4 to 6 months and as a consequence, several incidents were reported to Police and two breach letters were issued to him and he has had a talk with him. However, shortly thereafter on August 1, 2014 there was the second incident of him swearing and yelling at the tenant where children could hear him and other residents, one of whom testified she was so alarmed that she came down to be with the person who was subjected to the abuse. The manager said that a tenant reported overhearing a threat made by him about her car and she reported it to the Police. Two breach letters were issued by management dated June 30, 2014 and August 5, 2014 in respect to his loud language.

The tenant provided 4 letters of other tenants in support of him. One letter said she was a participant in the conversation where the alleged threat was made and she denied that any threat was made and had told the manager this too. She made some accusations against the tenant who complains of being threatened. Another letter stated there was no mention of a threat or fire bomb and she attests in a separate letter that the tenant has been a good and supportive friend to her and her son. Another letter from a third tenant states she has never had any issues with the tenant or his son. A letter from a fourth tenant states she has never seen the tenant drunk and disorderly although he is a bit loud at times but overall a good neighbour. A fifth letter also states the tenant is neighbourly and polite.

Included with the evidence is a copy of the Notice to End Tenancy, Police file cards, breach letters and letters from other tenants.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that he or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the evidence of the landlord is strongly supported by the oral evidence from his witnesses and by the Police incident cards and notes. I find the landlord entitled to an Order of Possession effective November 30, 2014 as requested in the hearing.

Although the tenant gave explanations for his loud behaviour when he was concerned for his nephew's safety and when he mistakenly believed a tenant had made a false accusation, I find this does not alter the fact that his loud and sometimes aggressive behaviour is significantly interfering with the peaceful enjoyment of other tenants and the landlord, especially when it is displayed in front of children in the complex. I find the many incident reports support the landlord's allegations that this has been a frequent occurrence. I note the tenant provided letters from 5 tenants who support him, two of them were involved in the alleged incident of the bomb threat and the others attest to the fact that he is a good person and does not bother them. I find the fact that his behaviour does not bother a few residents does not alter the fact that it is bothering a number of other tenants and is generating frequent complaints to management and the police. I dismiss the Application of the tenant to cancel the Notice to End Tenancy for cause. I find the tenancy is terminated on September 30, 2014

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 30, 2014. An Order of Possession is issued to the landlord effective November 30, 2014 as requested in the hearing pursuant to section 55 of 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: October 15, 2014

Residential Tenancy Branch

