



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1 Month Notice to End tenancy for Cause issued on November 25, 2014.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's application is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the notice to end tenancy issued on November 25, 2014, be cancelled?

Background and Evidence

The tenancy began on September 1, 2009. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenant paid a security deposit of \$275.00.

On October 7, 2014 and October 16, 2014, the parties attend a dispute resolution hearing. On October 18, 2014, the Arbitrator rendered a decision and the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause, issued on August 6, 2014, was granted. Filed in evidence is a copy of the decision.

The Arbitrator at the hearing held in October 2014, made the following finding,

"I wish to make it very clear that this decision is not a finding that the tenant has not significantly interfered with or unreasonably disturbed another occupant or the landlord. This decision holds, for the most part, that the evidence the landlord has presented is not of a quality sufficient to prove the allegations in the Notice on a balance of probabilities. Had some or all of the email authors attended, clarified and expanded on their evidence under oath, the result may have been different; the tenant may have been evicted."

[Reproduced as written.]

The parties agreed that a 1 Month Notice to End Tenancy for Cause issued on November 25, 2014, was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2014.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that since the last hearing the tenant continues to unreasonable disturb the other occupant as there is still a lot of noise coming from the tenant's rental unit. The agent stated that there is constant violent out bursts, by yelling, screaming and banging on the walls.

The landlord's agent testified that the tenant has also significantly interfered with the other occupant. The agent stated the tenant has engaged in a physical altercation with the occupant, has tampered with the other occupant's mail, has threatened the occupant with calls to Canada revenue services and to have their vehicle towed from the common area.

The landlord's agent testified that the tenant has also placed a cut of mannequin head in front of the occupant's car, and continues to move the head around in the common areas to intimidate the occupant. The agent stated that the tenant was asked to stop this behavior, however, this behavior continued.

Filed in evidence are two sworn affidavits in support of the landlord's application.

The tenant testified that her son is a purple belt in karate and regularly practices at home. The tenant stated that when her son is practicing his karate he uses two foam batons as weapons "like fencing". The tenant stated that when these batons strike they sound like someone striking the walls, which is likely the cause of the noise that the occupant is hearing. The tenant demonstrated the noise of the batons during the telephone conference.

The tenant testified that her son is not a perfect 12 year old and he has anger issues. The tenant stated that she has been involved in parenting courses and documents her son's anger in an attempt to find the triggers of these anger outbursts.

The tenant testified that on September 16, 2014, her son was upset in the vehicle and he may have slammed the door to the rental unit when he arrived home causing a disturbance.

The tenant testified that on November 24, 2014, there was a shouting incident which would have disturbed the other occupants.

The tenant testified that on December 27, 2014, her son caused a further noise disturbance because he did not want to go to his father's residence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Upon review of the 1 Month Notice to End Tenancy for Cause, I find the notice is completed in accordance with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case, I accept the tenant's evidence that on September 16, 2014, November 24, 2014 and December 27, 2014, that her son caused unreasonable noise disturbances by slamming the door, yelling and screaming.

Further, I accept the noise caused by the batons striking may possibly sound like someone striking the walls, although I find that highly unlikely; however, even if I accept the tenant's version, I find that the tenant ought to have known such noise would unreasonably disturb another occupant when used inside the rental unit.

I further note, that the tenant was aware in the previous hearing, that the noises as described above were causing an unreasonable disturbance for the other occupant, however, those noises continued after the hearing causing further unreasonable noise disturbances to the occupants.

As a result, I find that the 1 Month Notice to End Tenancy for Cause issued on November 25, 2014, was a valid notice. Therefore, I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause, issued on November 25, 2014.

As I have accepted the tenancy will end based on unreasonable noise disturbances, I find it not necessary for me to determine if the tenant has significantly interfered with another occupant or if the tenant has breached a material term of the tenancy agreement.

In this case, the tenant has paid rent for the month of January 2015; I find it appropriate to extend the effective vacancy date in the notice to January 31, 2015, pursuant to section 66 of the Act. The tenancy will legally end on January 31, 2015, in accordance with the Act.

As the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause, is dismissed. The tenancy will legally end in accordance with the Act on January 31, 2015.

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: January 06, 2015

Residential Tenancy Branch

