



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on January 5, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on January 8, 2015.

The form of the Notice to End Tenancy used by the landlord is confusing. It appears the landlord has combined two forms. The front page shows it is a 2 month notice for Landlord's use of property. However, the second page sets out the grounds which are consistent with a one month Notice for cause. I determine that as the landlord has not identified any grounds that would be consistent with a 2 month Notice that such a Notice has not been served. I determined that it was appropriate to consider this as an application to cancel a one month Notice to End Tenancy for cause. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated January 5, 2015 and setting the end of tenancy for February 28, 2015?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on February 1, 2012. The tenant has recently been given a Notice of Rent Increase and the rent commencing on February 1, 2015 will be \$1175. The tenant(s) paid a security deposit of \$550 at the start of the tenancy.

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

...

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Briefly, the landlord testified as follows:

- On January 2, 2015 the police were call to deal with a disturbance caused by the tenant. The tenant was growling and creating a concern for other tenants. The landlord testified there was a health issue with the tenant.
- Approximately 3 years ago the tenant pointed a gun at a window washer.
- Approximately 2 years ago the tenant got into a fight in the loading dock area. The police were called and the other person was arrested as there was a warrant for his arrest.
- Approximately one year ago the landlord had to help the tenant as he was passed out near the elevator.
- The other tenants are complaining about smells coming from the tenant's rental unit. The other tenants have expressed concerned about their safety.

The tenant responded as follows:

- Approximately 2 years ago the tenant suffered a head injury. He has been treated and is unable to work. He sometimes suffers from memory loss because of the injury.
- On January 2, 2015 he hit his head on a piece of furniture while getting up and was knocked unconscious. His girlfriend was present and called the ambulance. The police were subsequently called as he was behaving erratically. He was taken to St. Paul's hospital where he was in a coma for a period of time and was placed under sedation.
- He disputes that he is the cause of the smells. He acknowledged that he was concerned about recycling. However, the smells are caused by mould coming from a flood that took place a couple of years ago and because the landlord fails to properly clean the recycling containers.
- The police investigated the incident relating to the gun and window cleaner. No charges were laid. The gun was a toy gun and it was done as a joke. The landlord did not take steps to end the tenancy when it occurred.
- He denies he got into a fight in the loading area although he testified he tried to assist an intoxicated friend go home. That incident occurred two years ago.

- He has no recollection of the incident where the landlord testified he had passed out.

Analysis

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord testified he submitted letters from a couple of other tenants a couple of days ago. The letters were not submitted with the time period set out in the Rules of Procedure. They have not reached the file. Such a late submission of the evidence does not give the tenant adequate time to consider the evidence and to adjourn the hearing or consider the evidence would significantly prejudice the tenant. Further, the writers of the letters did not attend the hearing and limited weight could be given to the contents of the letters as the tenant has been denied the right to cross examine them.
- I do not accept the submission of the landlord that the incident which occurred on January 2, 2015 when the tenant accidentally hit his head resulting in the loss of consciousness is a sufficient basis to end the tenancy. The landlord called it a health issue. I do not consider this as amounting to a significant interference or unreasonable disturbance.
- The gun incident occurred 3 years ago, the alleged fight in the loading areas occurred 2 years ago and the passing out near the elevators occurred one year ago. If the landlord was genuinely concerned the landlord would have taken steps to end the tenancy much earlier than this.
- The landlord failed to prove that the tenant's action in recycling has amounted to an unreasonable disturbance.
- The landlord failed to lead evidence that there was an unreasonable number of people living in the rental unit.

Determination and Orders

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. **As a result I ordered that the Notice to End Tenancy dated January 5, 2015 be cancelled.** The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful **I ordered that the landlord reimburse the tenant the cost of the filing fee in the sum of \$50 such sum may be deducted from future rent.**

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 28, 2015

Residential Tenancy Branch

