



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COOL-AID (ASSOCIATION) SOCIETY
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a 1 Month Notice to End Tenancy for Cause dated January 8, 2015. Both parties appeared and gave testimony in turn.

The tenant did not appear due to an emergency involving a close friend. However, the tenant's daughter attended representing the tenant at the hearing. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The 1 Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and that the tenant had engaged in illegal activity that adversely affected the quiet enjoyment, security safety or physical well-being of another occupant or the landlord.

The tenancy began in November 2014. The landlord submitted into evidence written material that the landlord stated came from notes they made in their tenancy log and copies of the contents of email messages they had evidently received from other tenants.

The landlord testified that they have been receiving frequent complaints about the tenant's conduct. Some of the conduct being alleged involved the tenant interfering with

others in common areas, making verbal threats, intimidating other residents, moving furniture into common areas, taking items belonging to others, using profane language and making excessive noise. The landlord testified that they have repeatedly attempted to discuss these problems with the tenant, but she becomes agitated and hostile.

The landlord testified that that they had no other choice but to issue a 1 Month Notice to End Tenancy for Cause and they feel that the tenant's application to cancel the Notice should be dismissed.

According to the landlord, other residents are extremely disturbed by the tenant, but they fear reprisal if they lodge formal written complaints. The landlord pointed out that this is the reason that no witnesses would agree to appear at the hearing to give testimony.

The tenant's representative testified that the tenant has never been issued with any warning letters with respect to the alleged incidents of disruptive behaviour. The representative pointed out that some of the residents in the building may have their own communication barriers and problems relating to social interaction with others.

The tenant's representative stated that the landlord's evidence is not sufficient to prove that ending the tenancy is warranted and requested that the 1 Month Notice to End Tenancy for Cause be cancelled.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment. This right applies to other residents in the complex as well as the tenant herself.

I find that, if the tenant had engaged in the conduct described there is no doubt that this would constitute significant interference and unreasonable disturbance of other occupants under the Act. However, the question of what occurred is not an easy determination to make with nothing more than the landlord's notes and the verbal testimony before me, particularly as the burden of proof is squarely on the landlord.

I also find that the landlord has an obligation to issue warning letters to the tenant before terminating the tenancy in order to ensure that the allegations are clarified for the tenant's benefit and that the tenant understands that conduct in violation of the Act places her continued tenancy in jeopardy.

Ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour.

Given the above, I find it necessary to cancel the 1 Month Notice as the evidence presented by the landlord is not sufficient to justify terminating the tenancy at this time. However, the tenant is cautioned that this decision will serve as a warning and the tenant is now aware that if conduct of the nature described is repeated, it could function as a valid reason to issue another Notice to terminate tenancy for cause under section 47 of the Act or for the landlord to pursue other means of ending the tenancy.

In cancelling this Notice, I order that both the landlord and the tenant restrict all of their communications to written form in regard to tenancy-related concerns and to retain copies of all communications.

I also encourage the tenant not to bring her own complaints or criticisms directly to other residents, but instead, to send a note to the landlord outlining the specific concerns that she has.

Based on the evidence before me, I hereby order that the One-Month Notice to End Tenancy of January 8, 2015 be cancelled and of no force or effect.

Conclusion

The tenant is successful in the application. The 1-Month Notice to End Tenancy for Cause is cancelled and the parties are ordered to restrict future communications between them to written form.

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: February 05, 2015

Residential Tenancy Branch

