



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Avalon and Silver Hotel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel a 1 month Notice to end tenancy for cause issued on January 28, 2015.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the 1 month Notice to end tenancy issued on January 28, 2015 be cancelled?

Background and Evidence

The tenancy commenced 8 years ago. The tenant rents a room in a building that has 89 units. Rent is currently \$445.00 due on the 1st day of each month.

The landlord and the tenant agree that a 1 month Notice to end tenancy for cause was issued on January 28, 2015. The Notice had an effective date of March 1, 2015

The reason stated on the Notice was:

- that the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

The landlord set out a history of problems that are alleged to have occurred related to the tenant disturbing other occupants of the building.

The landlord said that on January 26, 2015 the tenant was again causing a disturbance and that another occupant went to the tenant's room and asked that he close his door. The occupant alleged the tenant threatened him with a weapon.

The landlord was able to obtain a police file number. A police representative told the landlord that the conflict that is alleged to have occurred on January 26, 2015 was the result of a threat with a weapon, made by the tenant against another occupant. The police would not provide any other details to the landlord.

The landlord had no other corroborating evidence of the alleged January 26, 2015 event.

The tenant said that he has not been contacted by the police, that he is not under any release conditions and not been charged with an offence. The tenant denied that he threatened anyone with a weapon.

Analysis

The tenant applied to cancel a Notice ending tenancy for cause issued on January 28, 2015; the effective date of the Notice was March 1, 2015. 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.

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to end the tenancy for the reason of illegal activity.

It is the landlord who has the burden of proving the tenancy must end. In the absence of independent verification supporting the alleged threat made on January 26, 2015, I find the reason given on the Notice is not supported.

The existence of a police file number does not provide any verification of fault; only that a file was created based on an allegation. The person making the allegation did not attend the hearing or provide a written statement setting out the details of the allegation.

I have not weighed the credibility of the parties as it is the landlord who has the burden of proving the reason on the Notice. The tenant equally denied any threat. Therefore, in the absence of corroborating evidence, the burden of proof has not been met.

Therefore, based on the absence of any evidence that would outweigh the tenant's submission, I find that the 1 month Notice ending tenancy for cause issued on January

28, 2015 is of no force and effect. The tenancy will continue until it is ended in accordance with the legislation.

Conclusion

The 1 month Notice ending tenancy for cause issued on January 28, 2015 is of no force and effect.

This decision is final and binding and 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: March 02, 2015

Residential Tenancy Branch

