



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought to cancel a Notice to End Tenancy for Cause issued December 31, 2014 (the "Notice") and to recover the filing fee.

The hearing began on January 28, 2015 and was adjourned by decision of that same date to March 2, 2015 as I found the hearing had been scheduled too soon for the parties to adequately present their evidence.

Both parties attended the hearing. The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the amount he paid to file the application?

Background and Evidence

Introduced in evidence was a copy of the 1 Month Notice to End Tenancy for Cause issued on December 31, 2014; the reasons cited were as follows:

- The Tenant, or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

(the “Notice”).

Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this case, the Tenant made his application within the prescribed time and specifically on January 9, 2015.

The Landlord testified that he issued the Notice as a result of complaints from other occupants about the Tenant. In support, he submitted a letter from, N.L.S. and E.C., occupants of the rental building who live on the same floor as the Tenant and who describe observed “a constant flow of people coming in and out of that apartment.... yelling at all hours of the night...[and] people waiting in the hallway in front of our doors” [Reproduced as Written].

The Landlord stated that the police had been performing surveillance of the Tenant’s apartment. He stated that he had obtained the police report but did not submit it in evidence as it had been heavily redacted. The Landlord failed to submit any other evidence in support of the Notice.

The Tenant agreed that he had numerous guests and admitted that these guests attended his rental unit as he was having regular sex parties. He testified that he installed a buzzer on his door to minimize the disturbance to other occupants. He further testified that he was unaware that his behaviour, or the behaviour of his guests, was disturbing others and that the first this was brought to his attention was when he received the Notice. Finally, he testified that since receiving the Notice he has reduced the number of parties, informed his guests to minimize noise, and has hosted these parties outside the rental unit.

The Landlord agreed that since issuing the Notice he has not received any further complaints from other occupants about the Tenant.

Analysis

The Landlord, when issuing a Notice to End Tenancy for Cause bears the burden of proving the Notice should be upheld. I find that the Landlord has failed to meet this burden and that there is insufficient evidence to support the Notice. At the conclusion of the hearing, I advised the parties that I was granting the Tenant's request to cancel the Notice. The Landlord stated that he expected such a result as he had provided minimal evidence. The tenancy will continue until ended in accordance with the Act.

The Tenant was cautioned that the comings and goings of guests, no matter what the purpose, can be disturbing to others. The Tenant confirmed he intended to continue to minimize any disruption to his neighbours.

The Tenant, having been successful, shall be entitled to recover of the filing fee and shall be granted a one-time credit of \$50.00 towards his next month's rent.

Conclusion

The application is granted and the Notice is set aside. The Tenant is to be credited the filing fee as a one-time \$50.00 reduction in his next month's 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: March 04, 2015

Residential Tenancy Branch

