



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUATERRA MANAGEMENT LTD., DBA COLUMBIA PLACE
APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC FF

Introduction

This hearing dealt with an application by the tenant to cancel a 1 Month Notice to End Tenancy For Cause (the Notice), dated February 23, 2015, sent to the tenant by registered mail and deemed received by the tenant February 28, 2015 - with an effective date of March 31, 2015. The tenant further requests recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to the application claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence that they wished to present.

The tenant acknowledged receiving the evidence of the landlord. The landlord claims they did not receive the evidence of the tenant and the tenant was unable to sufficiently support their claim they "offered" to serve the landlord's representative with their evidence personally and that the landlord refused to accept it. The landlord asserted the tenant did not attempt or in any fashion purport to serve the landlord in words or by their conduct. The tenant did not claim to they attempted to serve the landlord by any other method. My Decision was that the tenant failed to serve the landlord their evidence by any of the methods prescribed by the Act, and as a result, I found their evidence inadmissible for this matter.

At the outset the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for stated and sufficient reasons.

Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover their filing fee?

Background and Evidence

The relevant evidence of this matter is as follows. This tenancy began June 14, 2014. Rent is payable on the 1st of each month. The landlord submitted the first page of the Notice to End dated February 23, 2015. The landlord did not provide the second page of the Notice, however,

the parties agreed the second page of the Notice contained that the Notice to end was issued for the following reasons;

- Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

On the basis of the parties' agreement I accepted that Notice to end was issued on the above grounds.

The tenant disputes the Notice to End as unreasonable given that they were unclear of what prompted the Notice to End and that there has not been an issue with their tenancy since a prior letter from the landlord 4 months earlier. The tenant testified they feel they have not been treated fairly by the landlord.

The landlord claims that since the start of this tenancy the tenant's conduct resulted in numerous complaints of excessive noise and disturbance to other occupants of the building – specifically 2 other tenants – one above and one below the applicant tenant. The landlord provided written complaints from the 2 other tenants beginning in early July 2014, and also provided the resulting follow up by the landlord with the complainants and the tenant of this matter. These incidents resulted in a *warning* letter given to the tenant dated July 09, 2014.

The landlord's evidence is that following additional complaints in July, August and October 2014 the landlord gave the tenant a second letter October 15, 2014, outlining that the tenant's noisy conduct was disturbing other tenants and was contrary to what was stipulated in their agreement. The letter stated that failure to "rectify the situation by following rules and regulations as per the agreement . . . will result in a (1) month Notice to End Residential Tenancy". It was noted by the landlord that one of the complainants vacated the residential property claiming they were moving because of the applicant's conduct.

The landlord's evidence is that 4 months after the October 15, 2014 letter (February 14, 2015) the landlord received a new written complaint from one of the historical complainants of, "loud conduct on the balcony from (the tenant) at 1:30 am... til 4 am". The complaint of February 14, 2015 is notated that the tenant has, "already received breach letter, on October 15, 2014". The landlord testified that as a result of this complaint the landlord did not communicate with the complainant, nor the tenant; but rather, they relied on the letter issued 4 months earlier to then issue the tenant a 1 Month Notice to End on February 23, 2015. The tenant testified that they were not aware of the February 14 complaint and that receiving the 1 Month Notice was puzzling, as in their determination they had been mindful of their conduct since the warning of October 15, 2014 – all of which they relayed in a letter to the landlord submitted into evidence by the landlord. The tenant claims they are being unfairly targeted by the complainant who has unfairly complained about them before; and, that the landlord favours the complainant as they are a long term tenant.

Analysis

In this type of application, the burden of proof rests with the applicant (landlord) to provide evidence that the Notice was validly issued for the stated reasons and that the reasons are sufficiently supported by evidence, on balance of probabilities.

I find that the landlord's letter of October 15, 2014 is, effectively, a warning letter to the tenant outlining that a breach has occurred and that the next complaint will result in the landlord seeking to end the tenancy. I find the landlord took their stated position literally, taking the written complaint of February 14, 2015 as fact and acted on their determination to end the tenancy without further action. The landlord effectively testified they did not attempt to corroborate or confirm the allegation nor determine the scope or magnitude of the complaint. I find the complaint of February 14, 2015 is sufficiently vague that the landlord ought to have attempted to substantiate or validate the allegation given the disruptive repercussions of the landlord's 1 Month Notice. I find the landlord had a duty to at least obtain particulars of the purported conduct the complainant found offensive, so as the landlord could confirm that ending the tenancy was the fair course to pursue. I find it was further available to the landlord to call the complainant as witness in support of their action.

As result of all the above, I find the February 14, 2015 complaint, alone and unsupported inside a span of 4 months free of other concerns, is insufficient to support the reasons stated in the landlord's 1 Month Notice to End. I find that after 4 months of an uneventful tenancy it is unfair for the landlord to rely on a single unsubstantiated complaint to end the tenancy. As a result, I find the landlord has not met their burden in this matter. I find the landlord has not provided *sufficient* evidence the Notice to End was issued for *sufficient* reasons. Therefore, **I Order** the Notice to End dated February 23, 2015 **cancelled or set aside**. If necessary, the landlord is at liberty to issue another *new* Notice to End for *valid* reasons.

The tenant is entitled to recover their filing fee.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

In satisfaction of recovering the filing fee I Order that the tenant may deduct **\$50.00** from a future rent or other financial obligation to the landlord.

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: April 17, 2015

Residential Tenancy Branch

