



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord made an oral application for an Order of Possession should the tenant's application to cancel the Notice to End Tenancy be unsuccessful.

The landlord's assistant testified that she personally served the tenant with the 1 Month Notice on February 28, 2015 by handing it to him at the rental unit. The tenant confirmed receipt of this notice. The tenant testified that he personally served the landlord with his Application for Dispute Resolution package including Notice of Hearing on March 19, 2015. The landlord confirmed receipt of this package. Based on the testimony provided, I accept the tenant was duly served with the 1 Month Notice and I accept the landlord was duly served with the tenant's Application for Dispute Resolution package.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on August 1, 2012 on a month to month basis. The rental amount of \$950.00 is payable on the first of each month. The landlord testified, confirmed by the tenant, that the tenant paid no security deposit with respect to this tenancy. The tenant

currently continues to reside in the rental unit. The landlord applied, at this hearing, for an Order of Possession with respect to the rental unit.

The landlord issued a 1 Month Notice to End Tenancy for Cause for the reason that the “tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or landlord”. The landlord testified that the tenant plays his music very loudly and does not always turn it down when asked by the neighbours. The landlord testified that the walls are not well insulated within the residence and it is easy to hear sounds from other apartments.

The landlord testified that the tenant often complains when the landlord’s grandchildren come over to visit. The landlord testified that the children are young and it is difficult to keep them quiet. Again, he commented on the fact that the building is not well insulated, or sound-proofed. Beyond noise related concerns, the other allegations against the tenant include that the tenant takes pictures of other parts of the property that are not part of his residence; he has bothered a sunbathing neighbour, making rude comments; and he is generally rude or difficult.

The landlord testified that there is no illegal activity on the property by any person residing there but that the tenant is disruptive. The landlord’s assistant testified that she may have possibly chosen the wrong reason when preparing her application for dispute resolution.

Analysis

The landlord’s assistant testified that she may have made an error on the dispute resolution application for this hearing. Residential Policy Guideline No. 11 provides that;

*The Residential Tenancy Act...*allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances. ...

The guideline also states that, in determining whether it is reasonable in the circumstances to amend an application, an arbitrator must consider whether one party would be unfairly prejudiced by amending the notice.

To avoid prejudice to one party, the applicant may amend the application without consent if the dispute resolution hearing has not yet commenced. Rule 2.11 of the Dispute Resolution Rules of Procedure allows for amendments pre-hearing if they are

both submitted and served as soon as possible and at least 14 days prior to the hearing date.

In this case, the landlord did not make an application to amend the notice prior to the hearing. In these circumstances, the matter at issue is the end of a tenancy. The guidelines and the *Act* indicate that a “notice ending a tenancy must be clear, unambiguous and unconditional”. In this circumstance, the notice to end tenancy was not clear. Further, the landlord was not clear at the hearing in indicating whether he wished to amend his application.

Having issued a notice to end this tenancy, the landlord has the burden of proving that he has cause (reason) to end the tenancy. At the hearing of this matter, the landlord testified that there is no illegal activity on the property by anyone. While the landlord orally requested an Order of Possession, such an application could only be granted if the landlord has proven that he has cause to end this tenancy. The landlord must prove that the reasons stated on the Notice to End Tenancy are valid, namely that:

That the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or landlord

Section 47(1)(e) of the *Act* provides the authority to end a tenancy because the tenant has engaged in illegal activity that affects an occupant or landlord. The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The landlord gave insufficient evidence of illegal activity. In fact, the landlord testified that there is no illegal activity on the premises. He testified that the tenant does interfere with the quiet enjoyment of other occupants. The nature of the landlord's application does not allow illegal activity and quiet enjoyment to be considered separately.

I find the landlord has failed to support the validity of his 1 Month Notice to End Tenancy. The tenant is successful in his application to cancel the notice to end tenancy.

Conclusion

Based on the above, I hereby order the 1 Month Notice to End Tenancy of February 28, 2015, be cancelled. The 1 Month Notice is of no force or effect.

The tenant is hereby cautioned that continued disruption of the quiet enjoyment of other tenants or the landlord will place the future of this tenancy at risk.

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 13, 2015

Residential Tenancy Branch

