



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought more time to cancel a Notice to End Tenancy for Cause issued March 14, 2015 (the "Notice") and an Order canceling the Notice.

Both parties appeared at 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 to cross-examine the other party, and witnesses, 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.

At the outset of the hearing the Landlord confirmed that the Tenant was personally serviced the Notice on March 17, 2015. As the Tenant applied for Dispute Resolution on March 26, 2015, he was within the 10 days required by section 47 and as such does not require more time to make his application.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The Landlord testified that the rental unit is in a single room occupancy hotel which 98 total rental units. The Landlord confirmed they did not have any records of tenancies prior to taking over the rental building in December 2014 and that to their knowledge no formal written tenancy agreement had been entered into. The Tenant confirmed the tenancy began June 2014 and that the monthly rent was \$600.00.

S.M. confirmed that she personally served the Tenant on March 17, 2015. The reasons cited in the Notice 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 Landlord provided the following evidence in support of the issuance of the Notice.

1. S.M. further testified that the landlord has received numerous complaints from other occupants of the rental building. When I asked the Landlord if any of the other occupants had put their complaints in writing, S.M. stated that the other occupants wished to remain anonymous due to concerns for their safety and therefore did not put any of their complaints in writing.
2. M.S. testified that according to the "Shift Report", which is a running log of events at the rental building (not in evidence), complaints have been made from three different occupants on the following dates:
 - a. January 11, 2015 from M.C.;
 - b. February 3, 2015 from E.R.;
 - c. February 28, 2015 from M.C.;
 - d. March 12, 2015 from G.F.;
 - e. March 13, 2015 from M.C.;
 - f. March 17, 2015 from G.F.; and,
 - g. March 19, 2015 from M.C.

The Landlord failed to provide any details as to the nature of these complaints.

3. A former staff member, G.F., left her position and went on stress leave allegedly due to an altercation with the Tenant on March 12, 2015. Notably, G.F. did not testify at the hearing. S.M. provided the following information regarding this altercation.
 - a. G.F. did not attend the hearing although the Landlord introduced a letter purporting to be from her and dated March 12, 2015 and which the Landlord marked as “Exhibit 1”. In this letter she details the altercation from her perspective and writes the following:
 - i. G.F. asked the Tenant for identification for his female guest. Initially the Tenant stated she lived with him, and when G.F. told him that subletting was prohibited, he stated his guest was just visiting. According to S.M., the Tenant and his guest then went into the elevator with a pizza box.
 - ii. G.F. followed the Tenant and his guest into the elevator “as she need[ed] to go to the upper floor”. The Tenant then attempted to push her out of the elevator with the pizza box.
 - iii. While still in the elevator, the Tenant and his guest verbally accosted G.F., called her derogatory names and the Tenant’s guest threatened to kill G.F.
 - b. M.C. testified that after this incident, G.F. went on “stress leave”.
 - c. The Landlord introduced two letters from S.K. (marked as “Exhibit 2” and “Exhibit 3” respectively) which purported to detail her observations about the “April 4, 2015” altercation between the Tenant, his guest and G.F. Presumably S.K. meant the March 12, 2015 incident; in any case, I will not provide details of her letter for reasons which follow.
 - d. S.M. testified that on March 16, 2015 the city inspector and the fire department attended the rental unit and instructed the Tenant to remove an exterior lock he had placed on the rental unit door. According to S.M., this lock was apparently in violation of fire and safety regulations.
 - e. The Landlord also advised that the local police department attended the rental unit on April 28, 2015 due to allegations of illegal drugs. S.M. stated

that at that time, the police confiscated three separate jars of different drugs and a replica hand gun. Further, S.M. claimed that the police directed the Tenant to remove the exterior lock. Although M.C. confirmed a police report was available, that report was not introduced in evidence. Further, no photos of the lock, the replica gun, or the drugs were introduced in evidence.

- f. M.C. also stated that the police returned again on May 2, 2015 to speak with the Tenant. The Landlord did not know why the police were there.

The Tenant's advocate, D.Z., made submissions on his behalf. D.Z. noted that all of the evidence submitted by the Landlord involve allegations of behaviour on dates following the issuance of the Notice. D.Z. submitted that while the Tenant denies the allegations contained in those latter allegations, the Landlord simply did not have grounds to issue the Notice at the time the Notice was issued.

D.Z. further alleged that the evidence of S.K., which was provided by the Landlord, was in fact fabricated. In support, the Tenant submitted an audio recording of S.K. wherein she describes G.F. as being the aggressor in the altercation, rather than the victim as alleged by the Landlord. Further, the Tenant submitted a signed and dated letter from S.K. wherein she confirms she did not write the letter which was introduced by the landlord and confirms the contents of the audio recording.

Notably, S.K. was not in attendance at the hearing to explain the contradictory statements, or to be subject to cross examination. Accordingly, I give no weight to the conflicting evidence of S.K.

G.F. was also not in attendance at the hearing and was therefore not subject to cross examination. The Tenant adamantly denied G.F.'s allegations and stated that she was the aggressor.

Notably, aside from the anonymous, unspecified complaints noted in the Shift Report, all of the above allegedly occurred *after* the issuance of the Notice.

When I asked the Landlord if any warning letters had been issued, the Landlord asked me to consider the letter from the Landlord to the Tenant dated April 10, 2015. Again, this letter follows the issuance of the Notice and cannot therefore, be considered a "warning letter".

Analysis

The Landlord failed to introduce any reliable evidence which would support the issuance of the Notice. The only allegations which pre-date the Notice are those contained in the Shift Report, which were anonymous and unspecified. The Landlord failed to provide any details with respect to these entries, which would support a finding that the Tenant's behaviour warranted issuing the Notice.

I am unable to give any weight to the conflicting evidence of S.K., who did not testify and was not subject to cross examination. The evidence she appears to have provided to the Landlord and to the Tenant is contradictory and has the effect of canceling the other out.

Similarly, G.F. did not attend the hearing and was not subject to cross examination. Her allegations are denied by the Tenant.

Although a police report apparently exists regarding the events on April 28, 2015, the Landlord did not introduce it in evidence. Likewise, the Landlord failed to introduce any photos of the drugs, replica gun, or even the lock which the Landlord claims is attached to the exterior of the rental unit door.

Additionally, although the municipality and the fire department allegedly inspected the rental unit in March and directed the Tenant to remove the lock, no corroborating evidence was provided to support this allegation.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Accordingly, I find that the Landlord has failed to meet the burden of prove and has similarly failed to show on a balance of probabilities that the Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the Landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord alleged the Tenant was involved in illegal activity. Without any corroborating evidence I am not able to find, on a balance of probabilities that the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's

property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

Conclusion

The application is granted and the Notice is set aside.

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: May 12, 2015

Residential Tenancy Branch

