



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNC, FF
 Landlord OPC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession and to recover the filing fee for this proceeding.

The Tenant filed seeking an Order to cancel the Notices to End Tenancy and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on May 14, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on May 31, 2015, in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties Hearing Packages.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

The tenancy started on February 1, 2015 as a month to month tenancy. Rent is \$625.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$312.50 during the start of the tenancy. Both parties agreed no move in condition inspection reports were completed.

The Landlord said they issued a 1 month Notice to End Tenancy for Cause dated April 22, 2015 and served it to the Tenant by posting in on the door of the rental unit on April 22, 2015. The reasons for issuing the Notice to End Tenancy for Cause are that the Tenant has significantly interfering with or unreasonably disturbing another tenant or the landlord and he has seriously jeopardizing the health and safety of other occupants or the landlord. The Landlord said the Tenant shares the main floor of the rental unit with two other tenants and both those tenants have moved out. The Landlord said the two tenants moved out because they said they could not share the rental unit with the Tenant because he interfered with their quiet enjoyment of the property and they were afraid of the Tenant.

The Landlord presented a Witness G.N. (the Landlord's sister) who gave affirmed testimony that she had received up to 10 phone calls of complaint from the other two tenants that they were moving out because of the actions of the Tenant. The Witness G.N. said the former tenants were too afraid of the Tenant to testify at the hearing or give any written testimony for the hearing.

The Tenant said the Witness was not telling the truth as he is a friend of one of the former tenants and they still communicate and see each other. The Tenant said the tenants did not move out because of him. Further the Tenant said the Landlords have not provided any evidence except family testimony that the other tenants moved out of the rental unit because of the action of the Tenant.

The Witness G.N. said the other two tenants were too scared of the Tenant to give any testimony or evidence to the hearing but she did talk with them and they told her that they moved out because of the Tenants behaviour and racial slurs.

The Landlord said he did give the Tenant a warning note on April 8, 2015 that said the Tenant had disturbing the other tenants and if he continued his aggressive behaviour the Landlord would issue an eviction notice.

The Tenant agreed that he received the warning note but he did not believe it applied to him as he has always paid his rent and he is a quite person.

The Tenant did provide a witness that gave affirmed testimony that the Tenant was a good and quite person.

Further the Landlord said that towards the end of April, 2015 the Landlord and his mother went to the rental unit to collect the rent and the Tenant was aggressive and poked the Landlord and his mother in the chest with his finger. The Landlord said this is assault. The Landlord was asked if they called the Police and the Landlord said they did not because they had to deal with the Tenant until the tenancy ends.

The Tenant said he did not poke the Landlord or his mother and the Landlords were not being truthful about this meeting. Again the Tenant said he paid his rent and was a quite tenant. The Tenant said all the Landlord's evidence is from family; it is not true and it is only what they said they heard from other tenants. The Tenant said their testimony does not prove anything.

In closing the Tenant had his witness vouch for his character and the Tenant requested the Notice to End Tenancy for Cause be cancelled as the Landlord has not provided evidence that proves his claims.

In closing for the Landlord the Landlord's agent said the following:

1. A warning letter was issued but not submitted as evidence, but the Tenant confirmed receiving the written warning.
2. Two tenants left the unit because of the Tenant's behaviour.
3. The other two tenants have not provided testimony or written evidence because they are scared of the Tenant.
4. The Landlords are unable to rent the two other rooms in the rental unit because they believe the Tenant will cause similar problems with any new tenants.
5. The Landlord requests an Order of Possession for June 30, 2015 if the Landlord's application is successful.

Analysis

It is apparent from the testimony and lack evidence that there are issues between the Tenant and the Landlord. The Landlord said the Tenants have seriously jeopardized the health and safety of other occupants or the landlord and that the Tenants have significantly interfered with or unreasonable disturbed another occupant or the landlord.

Section 47 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, **they have to be significantly interfered with or disturbed** and their health or safety must have been **seriously jeopardized**. As such the Landlord must prove that the Tenant **seriously jeopardized** the health or safety of the landlord or another occupant and **significantly disturbed** another tenant or the landlord. The Landlord has provided family testimony that the Tenant has done these things but has not provided any corroborative evidence in the evidence package. The Landlord did say they issued a warning letter on April 8, 2015 but this was after the

other tenants had left the rental unit. The Landlord's sister gave testimony that the two other tenants left because of the Tenant but there is no corroborative evidence to support her testimony.

The Tenant said he was not the cause of the other tenants moving and said he is still friends with one of the former tenants.

As only the testimony of the parties directly involved with the tenancy has been provided for the hearing and that testimony is contradictory and neither party has provided any corroborative evidence to support their position I find the following. The burden of proving a claim lies with the applicant (landlord) and when it is just the applicant's word against that of the respondent's that burden of proof is not met. I find the Landlord has not met the burden of proof to prove the Tenant has **significantly disturb** other tenants or the Landlord or has **jeopardized the health or safety** of other tenants or the Landlord. The Landlord was unable to provide or submit any statements from the other tenants as to why they moved out and the Landlord did not phone the Police when the Landlord said the Tenant assaulted him and his mother. I find the burden of proof has not been met by the Landlord. I dismiss the Landlord's application without leave to reapply.

With respect to the Tenants application I find due to the lack of evidence the Tenant is successful in cancelling the Notice to End Tenancy. I Order the Landlord's Notice to End Tenancy for Cause dated April 22, 2015 to be cancelled and the tenancy is order to continue as in the tenancy agreement.

Further I find that this hearing can be used as a significant warning to the Tenant that any aggressive behaviour to the Landlord or other tenants can result in the Landlord issuing another Notice to End Tenancy and this hearing can be used to support the Landlord's evidence if the Landlord chooses to use it.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the July, 2015 rent. The July, 2012 rent is adjusted to \$575.000.

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of the application of \$50.00 which the Landlord has already paid.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated April 22, 2015 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

I order the Tenant to adjust his July, 2015 rent to \$575.00 in order for the Tenant to recover the filing fee of \$50.00 for this proceeding.

The Landlord's application is dismissed without leave to reapply.

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: June 10, 2015

Residential Tenancy Branch

