



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Cause.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by mail on June 23, 2015. Based on the evidence of the Tenant and the Landlord's agent, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on November 1, 2013 as a fixed term tenancy with an expiry date of August 30, 2014 and then continued on a month to month basis. Rent is \$1,383.75 on the 1st day of each month. The Tenant paid a security of \$675.00 on November 1, 2013.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated June 9, 2015. He served the Notice on June 9, 2015 by registered mail to the Tenants. The Effective Vacancy date on the Notice is July 31, 2015. The Tenants are living in the unit and the Landlord's agent said the Landlord wants to end the tenancy.

The Landlord's agent continued to say that the Tenant had a party on March 27, 2015 at which the Tenant had a guest that created an incident. The Landlord's agent said there were a number of people maybe up to 10 guests on the Tenants' balcony and they were loud and drinking. The Landlord's agent said the security guard was verbally abused and a banana peel was thrown at the security guard. The Landlord's agent submitted

the security guards report which confirms this incident. Further the Landlord's agent said the Property Strata convened to review this incident and issued a fine of \$200.00 to the owner of the property for the Tenants' behaviour. The Landlord's agent provided an email from the Strata to both the Landlord and the Tenant explaining the Strata's findings and the fine of \$200.00. The Landlord's agent said the Tenants have not paid the fine and they have not apologised to the Landlord for the incident. The Landlord's agent submitted a letter from the Landlord indicating the owner believes this incident is grounds for an eviction.

The Landlord's agent said the Tenants have been in the unit for almost 2 years and this is the only incident that has occurred with the Tenants. The Landlord's agent said that this is a serious incident and should be dealt with by evicting the Tenants.

The Tenant said he is not disputing the incident but they have been good tenants other than this one incident. The Tenant read a letter from the Tenant's neighbour in the rental complex and the letter confirmed the Tenants were respectful and good neighbours. The Tenant said there was no banana peel thrown at the security guard, but there was a conversation that was confrontational. The Tenant said the security guard made some claims about his war accomplishments and the Tenant's guest told the security guard he was an idiot. The Tenant continued to say that they left the common area when the security guard told them too. The Tenants said the security guard brought on any confrontation with the guest and it was only words. The Tenant said nothing was throw and nothing physical happened.

Further the Tenant said he is sorry this incident happened as they like living at the unit and he was not aware of the strata fine, but he is willing to pay it. The Tenant said this situation has got much bigger than it should be and he regrets it and the Tenants would like to work with the Landlord's agent and the owner. The Tenant said that they would like to continue the tenancy and will do what it takes to make things work.

The parties were offered an opportunity to settle this matter between them, but the Landlord's agent said he did not have the authority to do that as the Owner wants to end the tenancy.

The second reason on the Notice to End Tenancy was for an unreasonable number of occupants in the unit. The Landlord's agent thought there may be up to 10 guests and the Tenant said there were 3 to 4 guests on the balcony when the incident happened. As well the Landlord's agent said the incident was over by approximately 11:30 to 12:00 that night.

The Tenant said in closing they are good tenants and this was a one off incident that will not happen again.

The Landlord's agent said the Owner has instructed him to end the tenancy and he believes this incident is serious enough to have the Tenants evicted.

Analysis

It appears from the testimony at the hearing that communications between the Landlord's/Owner and the Tenants has broken down. There was contradictory testimony provided by both the Tenant and the Landlord's agent regarding the facts of the situation. The Landlord's agent said a banana peel was through at the security guard and the guard was verbally threatened. The Tenant said no banana peel was thrown at the guard and the confrontation was not a threat but an insult. The police were called but there is no evidence of a police report or any charges.

Consequently the parties will abide by the following decision. In Section 47 (d) 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 must have been **unreasonably** disturbed, or **seriously** interfered with. In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date June 9, 2015 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

Further I find that up to 10 guests that are not occupants staying in the rental unit is not grounds to validate a Notice to End Tenancy for Cause because the guests are not living in the unit they are just visiting. I dismiss the Notice to End Tenancy on the grounds of too many occupants living in the rental unit.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated June 9, 2015 is cancelled and the tenancy is ordered to continue as indicated in the tenancy agreement.

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: August 24, 2015

Residential Tenancy Branch

