



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEASCAPE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy dated June 23, 2015.

The Notice claims that the tenants for a person permitted on the premises by them has significantly interfered with or unreasonably disturbed another occupant or the landlord. The Notice also claims that the tenants have engaged in some illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

Either of these grounds, if proved, are authorized grounds to evict a tenant under s47 of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Does the relevant evidence presented during this hearing show on a balance of probabilities that either ground for eviction has been established?

Background and Evidence

The rental unit is a one bedroom apartment in a conventional 60 unit apartment building. The tenancy started in January 2015. The current monthly rent is \$1230.00. The landlord holds a \$615.00 security deposit.

The landlord's representative Ms. L.S. is the building manager and lives on the first floor of the building. The rental unit is on the fifth floor.

She testifies that on June 17, 2015 she was outside the building and observed the tenant Mr. D.M., partially clothed, standing outside the railing of the rental unit balcony. He was yelling at someone and threatening to jump. People on the street were yelling for him not to jump.

She says she decided she should call the police. Friends of the tenant came up to her, very close, and angrily tried to dissuade her from calling the police.

The police and an ambulance ultimately arrived but, she say, the tenant Mr. D.M. had already left with two friends.

In her view, Ms. L.S. now feels that Mr. D.M. was pulling a prank.

Ms. L.S. also complains that the tenant Mr. D.M. smokes in the building, contrary to the “no smoking” rule.

In regard to the “illegal conduct” claimed in the Notice, she is of the opinion that the tenant Mr. D.M. must have been on drugs when he was on the balcony and drugs are illegal.

She attempted to relate conduct of Mr. D.M. after the Notice of June 23rd and been issued but was informed that only conduct up to the date of the Notice could justify that particular Notice and so later conduct was not relevant to the issue here.

The tenant Mr. C. O. testifies that Mr. D.M. was only yelling to someone from the balcony. He confirms that he was not there that day. There is no suggestion that the tenant Mr. D. M. is under or is in need of psychiatric care.

Analysis

The ending of a tenancy is a very serious matter. A landlord establishing cause for eviction will be required to provide convincing, cogent proof of an infraction justifying the ending of a tenancy.

Mr. D.M. being caught smoking on single occasion somewhere on the common property is not, on its own, a cause for eviction.

The landlord has not proved that any “illegal” activity has occurred and so that ground for the Notice fails.

In this case, the best evidence of what occurred on June 17th is that of Ms. L.S., who was there. In the absence of direct evidence from Mr. D.M. or some other witness as to what occurred, I accept Ms. L.S.’s recollection of the event.

I find that the tenant's conduct in placing himself on his fifth floor balcony, outside of the protection of the railing and yelling to persons below and threatening to jump, to be conduct that has unreasonably disturbed another occupant, Ms. L.S. in particular.

Conclusion

The landlord has established that the tenants have unreasonably disturbed another occupant of the rental property. The Notice to End Tenancy was justified.

The landlord's representative requested an order of possession at this hearing, as she is entitled to do under s.55 of the *Act*. The effective date of the Notice to End Tenancy was July 31, 2015. The tenancy ended as the result of that Notice. The landlord will have an order of possession.

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: September 01, 2015

Residential Tenancy Branch

