



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

On July 22, 2015 the tenant applied to cancel a 1 month Notice to end tenancy for cause issued on July 21, 2015.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the 1 month Notice ending tenancy for cause issued on July 21, 2015 be cancelled?

Background and Evidence

The tenancy commenced on January 26, 2015, rent is \$440.00 per month. A copy of the tenancy agreement was supplied as evidence. The parties agreed the rent is due on the first day of the month.

The landlord and the tenant agreed that a 1 month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on August 31, 2015.

The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has:

- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and

That the tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and
- engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

The landlord confirmed that there was no allegation of illegal activity and that there was only the one other reason which he wished to rely on.

The rental unit was built in 1954, is a wood-frame building and has 12 units. The landlord lives in the building.

The landlord said that the tenant is coughing and disturbing other occupants and the landlord, often up to 2 a.m. The landlord has received six notes of complaint from other occupants. Those notes have not been submitted as evidence or given to the tenant.

The coughing sounds are making other people mad. The landlord has recommended the tenant use honey as a method of reducing his cough.

The tenant said that he does cough, that he has some medical issues. The tenant said is not constantly coughing, but does have some problems at the end of the day. The landlord has talked to the tenant about his coughing.

Analysis

In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reason on the Notice; that the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I find that a significant disturbance would be one which was substantial or serious in nature and, that serious jeopardy must reflect a situation, as defined by **Black's Law Dictionary**, that includes a "danger; hazard; peril."

I find that sounds caused by coughing are the sounds of normal day-to-day living

that can be expected in a multi-unit building. There was no evidence before me to support the allegation that the sound of coughing affects the health or safety or lawful interest of any party.

Even if the tenant was given notice of complaints by other occupants, I find that coughing would not support ending this tenancy for cause.

Therefore, I find that the 1 month Notice ending tenancy for cause issued on July 21, 2015 is of no force and effect and is cancelled. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Notice ending tenancy is cancelled.

This decision is final and binding and 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 10, 2015

Residential Tenancy Branch

