



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE

Introduction

This is an application brought by the tenant requesting an Order canceling a Notice to End Tenancy that has been given for cause, requesting an Order that the landlord comply with the Act or tenancy agreement, and requesting an Order suspending or setting conditions on the landlord's right to enter the rental unit.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not to cancel or uphold a Notice to End Tenancy that was given for cause, whether to issue an Order against the landlord to comply with the Residential Tenancy Act or tenancy agreement and whether or not to suspend or set conditions on the landlord's right to enter the rental unit.

Background and Evidence

All parties agree on the following:

- This tenancy began on August 1, 2014 and the present monthly rent is \$865.00.
- On August 27, 2015 the landlord posted a one month Notice to End Tenancy on the tenant's door.
- On September 4, 2015 the tenant filed a dispute of the Notice to End Tenancy.

The landlord testified that ever since the tenant moved into the rental unit there has been an ongoing problem with noise from the tenant suite including loud noise of the TV and of music.

The landlord further stated that many letters have been sent to the tenant requesting that he stop causing loud disturbances and yet it is still ongoing.

The landlord further stated that on August 24, 2015 the tenant struck her in the face knocking her to the ground leaving a large bruise on her face and a cut on her elbow (photos included). She further stated that the tenant was then arrested and charges were laid with the hearing pending in November 2015.

The landlord further stated that she has provided evidence in the form of voice recordings of messages left on her answering machine, which demonstrate the violent nature of the tenant.

The transcript of the voice recordings are as follows:

1st message:

3:05 in the afternoon. I'm trying to sleep. It's my one day off and she's banging on the floor. Dwight from 101 to 201 or whatever it is up there. I've had enough of it. You want me to start calling again at 3 or 4 in the morning. Cause that's what I'm going to fucking do. I've had it with his bitch upstairs. She gets away with everything. Too bad. This is nuts cause I've got to put up with it. Too bad. Either take care of it or I will.

2nd message:

Dwight 101. If this doesn't stop I'm telling you I'll I'll take care of it myself you dumb little fucking bunch of assholes. Take care of it because I'm trying to sleep here and this bang bang on the fucking floor. Take care of it.

The tenant testified that he did leave the above recordings as he was frustrated by being woken up by the lady above him from whom he's had nothing but trouble. He had awoken from a dead sleep and was fed up with the landlords failing to resolve the issue even though he requested they deal with the problem on numerous occasions.

Analysis

It is my decision that I will not cancel the Notice to End Tenancy because it is my finding that the voice recordings that the tenant admits that he left on the landlord's answering machine are abusive and threatening, and are definitely an unreasonable disturbance of the landlord.

Section 47(1)(d) of the Residential Tenancy Act states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

The tenant uses the excuse that he was awoken from a dead sleep; however that is not a reasonable excuse to use such abusive language towards the landlord. Such language is not only an unreasonable disturbance of the landlord; it is a significant interference with the landlord's right to quiet enjoyment.

Further it is my finding that the use of such abusive language is an intimidation tactic that seriously jeopardizes the lawful right of the landlord.

This application to cancel the Notice to End Tenancy is therefore denied and at the request of the landlords I will be issuing an Order of Possession for the end of November 2015.

Since this tenancy is ending, I will not issue any Orders against the landlord to comply with the act or limiting the landlord's right of entry.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

I have issued an Order of Possession for 1:00 PM on November 30, 2015.

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: November 05, 2015

Residential Tenancy Branch

