



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on January 22, 2015 wherein the Tenant sought to cancel a Notice to End Tenancy for Cause issued on January 13, 2016 (the "Notice") and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the amount he paid to file the application?

Background and Evidence

Neither party submitted a copy of the residential tenancy agreement. The Landlord's building manager, B.J., testified that the tenancy began on August 11, 2010. Monthly rent is payable in the amount of \$589.00.

The reasons cited in the Notice were as follows:

- The Tenant, or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- the Tenant has engaged in 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

Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. The Tenant made his application for dispute resolution on January 22, 2016.

B.J. failed to provide any evidence as to the service of the Notice. However, as the Notice was issued on January 13, 2016 and the Tenant applied on January 22, 2016, there is no issue with respect to whether the Tenant applied within the required timeline.

Introduced in evidence was a letter from B.J. to the Tenant wherein B.J. writes as follows

"I received a complaint from one of my tenants stating that you had a visitor on Jan. 6th 2016 approx. 7:30 pm had been very intoxicated, harassing and being verbally abusive towards them to the point of being threatened!"

"This will not be tolerated in this building and will result in an eviction notice if this ever occurs again!"

[Reproduced as Written]

B.J. testified that he sent the above letter on January 10, 2016. As he then issued the Notice on January 13, 2016 I asked him what happened between January 10, 2016 when the warning letter was sent and January 13, 2016 when the Notice was issued.

In response, B.J. testified that he issued the Notice as he was receiving threatening and harassing text messages from the Tenant. These text messages were not provided in evidence. When B.J. was asked to provide further details as to the contents of these text messages B.J. stated as follows:

- “he was threatening to go to arbitration”;
- “he demanded an apology”;
- “he said that if [I] was going to put in a complaint about him, that he would start complaining about others”; and,
- “he was driving me nuts and would text me as many as six times a day”.

When I asked the Landlord if he had issued the Notice because of the incident on January 6th, 2016 which is referenced in the warning letter, or the text messages he received from the Tenant between January 10, 2016 and January 13, 2016, B.J. confirmed that he issued the Notice because of the text messages.

The Landlord called T.K. as a witness. T.K. was the tenant referenced in the warning letter. T.K. testified that he had recently taken in a rescue dog and was taking the dog out for a walk. He stated that one of the Tenant’s friends was outside, obviously intoxicated, and began “harassing” T.K. T.K. stated that he was worried about the dog and told the Tenant’s friend that he was worried how the dog was affected at which time the Tenant’s friend began howling like a dog. T.K. stated that the Tenant’s friend began following T.K. and positioning himself in T.K.’s “safety space”.

I informed Landlord that I had concerns about the insufficiency of evidence and in particular the fact he claims to have issued the Notice as a result of the text messages sent by the Tenant, yet did not provide copies of those messages in evidence.

TENANT’S EVIDENCE

The Tenant confirmed that he had a guest over on January 6, 2016 who was intoxicated. He stated that he did not appreciate how intoxicated his friend was initially. He said that his friend left, and shortly thereafter the Tenant could hear an altercation. He stated that he saw his friend behaving poorly and told him that he couldn’t act as he was.

The Tenant further testified that when he received the warning letter he told his friend that he was no longer welcome at the rental unit or the rental property. The Tenant stated that he believed he took the required action to ensure that there was no reoccurrence of the events on January 6, 2016 by banning his friend from the rental unit.

The Tenant denied sending harassing text messages to the Landlord. He stated that he did inform B.J. that if B.J. took the matter further that he would oppose any eviction efforts and would apply to the Residential Tenancy Branch. B.J. also confirmed that he did issue a complaint about another renter's dog, but that this was an unrelated matter. B.J. denied B.J.'s claim that he sent

Analysis

The Landlord cited the Tenant's alleged harassing text messages as being the reason for issuing the Notice. Although he issued a warning letter on January 10, 2016, which in turn references an incident on January 6, 2016, he did not cite this incident as being the reason for issuing the Notice.

T.K.'s evidence related to the January 6, 2016 incident.

The Tenant confirmed that he addressed his friend's behaviour immediately upon becoming aware of the altercation on January 6, 2016 and he has since told his friend he is not welcome to come to the rental unit, or the rental property.

The Tenant denied sending harassing text messages to the Landlord.

As indicated during the hearing, the evidence surrounding the text messages was minimal. Two possible versions of events were presented by the parties. Neither party submitted copies of these messages in evidence.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord bears the onus of proving that the Notice should be upheld.

I find that the Landlord was provided insufficient evidence to support a finding that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. B.J. alleged the

Tenant sent harassing text messages. Those messages were not in evidence and the Tenant denies they were excessive in terms of the number of messages, or threatening or harassing in any way.

Although B.J. stated that the reason for issuing the Notice was the text messages, the warning letter relates to the January 6, 2016 incident. While the Tenant acknowledges that his friends was intoxicated and had an altercation with the other renter, the evidence before me does not satisfy me that this altercation was such a significant interference as to end the tenancy. Further, I am satisfied that the Tenant made his best efforts to control his friend's behaviour and has since communicated to his friend that he is not welcome at the rental unit or on the rental property. In doing so, I find the Tenant has taken steps to prevent a reoccurrence.

The Landlord also failed to submit any evidence that the Tenant has engaged in illegal activity as alleged on the Notice.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

The Tenant, having been successful, shall be entitled to recover of the filing fee and shall be granted a one-time credit of \$50.00 towards his next month's rent.

Conclusion

The application is granted and the Notice is set aside. The Tenant is to be credited the filing fee as a one-time \$50.00 reduction in his next month's rent.

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: March 02, 2016

Residential Tenancy Branch

