



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wing Lee Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This is an application brought by the tenant requesting an order canceling a Notice to End Tenancy that was given for cause.

Some documentary 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.

The parties were affirmed

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for cause.

Background and Evidence

The parties agree that on January 31, 2016 the landlord personally served the tenant with a one-month Notice to End Tenancy giving the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit.
- Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturb another occupant or the landlord.
- Tenant or person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

- 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.

The landlord testified that he has had numerous complaints from other tenants about the high-volume of people coming and going from this tenants rental unit.

Landlord further testified that they had a previous dispute resolution hearing and at that hearing the tenant agreed that he would no longer have a dog visiting the rental unit and yet the tenant continues to have a dog visit the rental unit approximately 7 to 10 times a week.

The landlord further testified that although one of the tenants to complain may be overly sensitive as he lives right below this tenant, the other tenant who has complained has never filed any complaints before, and he believes this person to be a credible witness. He has provided a copy of a written complaint in the evidence package.

The tenant testified that he is not the one causing the problems at the rental property, that the problems are being caused by people from the homeless shelter that is right next door to the property.

The tenant further testified that the people from the homeless shelter are not his guests and just come and go without any invitation.

The tenant further testified that he himself has asked the homeless shelter to provide security to stop the homeless people from entering their rental property.

The tenant further testified that he did previously agreed not to have a dog visit the rental unit however his girlfriend has a small dog and she does on occasion bring the dog to the rental unit.

Analysis

Sections 47(4) & 47(5) of the Residential Tenancy Act state:

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

In this case the landlord testified that the tenant was personally served the Notice to End Tenancy on January 31, 2016 and the tenant did not dispute the landlord's testimony on service. Therefore any dispute of the notice was required to be filed by February 10, 2016.

The tenant did not file the dispute of the notice until February 11, 2016, one day outside the time limit and therefore pursuant to section 47(5) of the Residential Tenancy Act the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and the tenant must vacate the rental unit.

Therefore I will not cancel the Notice to End Tenancy.

Further, even if the tenant had filed within the required timeframe it is my finding that the landlord did have grounds to end this tenancy, because in a previous dispute resolution hearing the following agreement was reached:

The Parties mutually agree as follows:

1. The Tenant will not bring a visiting dog into the unit;
2. The Tenant has full rights to carry out normal living activities in the unit however the Tenant will make best efforts to reduce noise from the unit; and
3. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.

In spite of the above agreement the tenant has admitted that he has brought a visiting dog into the unit, in contravention of this agreement, and it is my finding that this seriously jeopardizes the lawful right of the landlord, as the landlord had agreed to allow the tenancy to continue based on this mutual agreement.

Conclusion

This application to cancel a Notice to End Tenancy has been dismissed and pursuant to section 55 of the Residential Tenancy Act, I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

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 30, 2016

Residential Tenancy Branch