



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNC, MNDC, FF, O, OLC.

Landlord's application: OPC, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a one month Notice to End Tenancy for cause. The tenant also sought other relief, including a monetary award and an order that the landlord comply with the Act, Regulation or tenancy agreement, but he did not submit any documents or provide any oral testimony in support of any claims apart from the request to cancel the Notice to End Tenancy; I therefore consider the tenant's claims other than the application to cancel the Notice to End Tenancy to be abandoned. The landlord applied for an order of possession pursuant to the Notice to End Tenancy dated May 19, 2016. The tenant attended with his legal advocate and the landlord's named representatives called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated May 19, 2016 be cancelled?

Is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?

Background and Evidence

The rental property is a four storey apartment building in Vernon. The tenancy began April 1, 2015. The rental property was sold and the landlord in this proceeding became the owner in January of this year.

The landlord served the tenant with a one month Notice to End Tenancy for cause dated May 19, 2016. The Notice to End Tenancy was served by posting it to the door of

the rental unit. The stated reasons for the Notice to End Tenancy are that the tenant has significantly interfered with or unreasonably disturbed 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 physical well-being of another occupant.

The Notice to End Tenancy required the tenant to move out by June 20, 2016, although pursuant to the *Residential Tenancy Act*, the earliest date that the Notice to End Tenancy could be effective if upheld is June 30, 2016.

The landlord's representatives testified that on May 3, 2016 the landlord's building manager called the RCMP to make a complaint concerning loud music coming from the rental unit. The landlord's representatives said that the RCMP attended at the rental unit and requested that the tenant turn down the music. The landlord's representatives said that a few days later the building manager along with the property manager delivered a warning letter about the incident. The landlord's representative said that the tenant swore at them and acted in an abusive and aggressive manner. The tenant also denied that the RCMP had visited him. The landlord's representative said that when she attended at the rental unit there was an odour of smoke in the rental unit and smoking is not allowed.

Several weeks later on May 19, 2016, the landlord served the tenant with a one month Notice to End Tenancy by posting it to the door of the rental unit. The landlord's representative testified that she delayed serving the Notice because she had been away on a family matter. The landlord's representatives said that there have been other occupants' complaints about the tenant, but none of the other occupants were willing to put their complaints in writing.

The landlord's representative said that the tenant's behaviour was unacceptable and constituted grounds to end the tenancy. She requested that an order of possession be granted.

The tenant said that he was reprimanded about his loud music on May 3rd. The tenant does not believe that the individual who attended was an RCMP officer. He asked for identification and it was refused. The tenant acknowledged that he used an obscene word once when the landlord's representative attended a few days after the May 3rd incident. The tenant testified that he does not smoke in the rental unit. He said that he does use an "E-cigarette" device which he said: "is perfectly legal".

Analysis

The landlord gave the tenant a warning with respect to the May 3rd. noise complaint. The landlord did not consider the incident by itself as sufficient grounds to justify the issuance of a Notice to End Tenancy for cause. The landlord's representative alleged that there have been complaints from other tenants but did not provide statements from any other occupants. The tenant did acknowledge that he swore at the landlord's representatives on one occasion. The event is concerning because it was upsetting to the individuals and it was perceived by the landlord as threatening or intimidating behaviour. The landlord did not respond to the incident for more than two weeks afterwards, until the Notice to End Tenancy was served On May 19th. Upon the evidence presented at the hearing there has been no repeat of the noise incident on May 3rd and there has been no repeat occurrence of the swearing incident.

The landlord has not established that the tenant is smoking in the rental unit, or that there have been complaints about smoking or any other matters by other occupants of the rental property. The landlord did not provide evidence to establish that the tenant has engaged in any illegal activity. She referred to the allegation that the tenant is smoking in the rental unit. I was not provided with documentary evidence that smoking is prohibited in the rental, although that may be contained in an addendum to the tenancy agreement not provided to me. I find that it has not been established that the tenant has smoked in the rental unit.

The tenant acknowledged that he swore at the landlord's representative. I accept that this was a disturbing event, but I do not find that this event, by itself amounts to sufficient cause to end the tenancy. The landlord has not established that the tenant has smoked in the rental unit and she did not provide evidence of complaints by other occupant of the rental property.

I find that the landlord has not established that there is sufficient cause to end the tenancy for any of the grounds stated in the Notice to End Tenancy; I therefore allow the tenant's application and I order that the Notice to End Tenancy dated May 19, 2016 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. The landlord's application for an order of possession is dismissed. The dismissal of the landlord's application does not preclude the landlord from serving another Notice to End Tenancy for cause if there are incidents in the future or conduct by the tenant that would justify the issuance of a further Notice.

Conclusion

The tenant's application to cancel the Notice to End Tenancy has been granted; the remainder of the tenant's claims in his application are dismissed. The landlord's application for an order of possession has been dismissed. The tenant is entitled to recover the \$100.00 filing fee for his application. He may deduct the said sum from a future instalment of rent payable to the landlord.

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: July 4, 2016

Residential Tenancy Branch