



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Dispute Codes CNC, FF, AAT, CNL, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause (the “Notice”), to cancel a 2 Month Notice to End for Landlord’s Use of Property, to allow access to (or from) the unit, and to recover the filing fee from the landlord.

Both parties appeared, gave 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 at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice issued on August 18, 2016, be cancelled?

Background and Evidence

The tenancy began in 2008. Current rent in the amount of \$1,150.00 was payable on the first of each month. The tenant paid a security deposit; however, neither party could remember the amount.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2016.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and

- seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

The landlord testified that they had complaints from another occupant that the tenant would be yelling and screaming. The landlord stated that the other occupant asked the tenant if they would keep their unit door close as the tenant would leave it open making the other occupant uncomfortable and the noise would travel. The landlord stated that an argument between the two occurred and the tenant was yelling, and swearing at the occupant.

The landlord testified that the occupant attempted to make peace with the tenant and bought them flower; however, the tenant threw them in the garbage. The landlord stated the tenant told the occupant that no one is going to tell them how to behaviour and again was yelling as swearing at the occupant.

The landlord testified that they spoke to the tenant and told them to keep their unit door closed. However, the tenant did not comply and further disturbances occurred that resulted in the tenant threatening another occupant with a sling shot.

The landlord testified that the police were also called when the occupant felt threatened by the tenant as they drove their van, directly at the occupant coming close to them.

The landlord's witness RR testified that they are also an occupant in the building. RR stated that the other occupant came to them very upset and scared of the tenant. RR stated that they have also witness the tenant blasting a fog horn at the other occupant when they came home. RR stated the tenant has difficulties containing their emotions.

The tenant testified that on July 18, 2016, the occupant came to their unit asking if they could keep the door close. The tenant stated that they told the occupant no. The tenant stated that they are unsure if the tenant heard them as the occupant then closed their door. The tenant stated that they instinctively got up and unfortunately it did not go well.

The tenant testified that they keep the unit door open to get a cross breeze as the unit can get extremely warm. The tenant stated that they work at their computer and often will yell and swear at it. The tenant stated that the walls in the building are very thin and if the other occupants are home they will hear them swearing or yelling.

The tenant testified that there were further arguments with the occupants regarding them having the door open and using the common area. The tenant stated that the other occupant would not back off , so they reached for their catapult and threatened to use it.

The tenant testified that they did speak to the police.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health and safety or lawful right of another occupant or the landlord

In this case, I am satisfied that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant admits that they yell and swear at their computer and that they could be heard by other occupants as the walls are very thin. Further, the tenant continued to keep their rental unit door open after they were ask not to do so, to help illuminate the noise. The tenant did not do so and further noise disturbances occurred. I find the tenant's action unreasonable as they made no effort to stop yelling or swearing at their computer and made no effort to keep their unit door closed. The tenant yelled and screamed at the other occupants when they complained.

Further, the tenant admitted pointing a catapult, which is sling shot, at another occupant after another incident occurred. I find the tenant's behaviour unreasonable as they simply could have closed their rental unit door rather than to engage in bad behaviour and threaten the use of a weapon. Acts of violence or threat to use weapons are not acceptable behaviour under any circumstances.

I find the Notice issued on August 18, 2016, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy has legally ended in accordance with the Act.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

As the tenancy has legally ended based on the Notice, I find it not necessary to consider the balance of the tenant's application.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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: October 23, 2016

Residential Tenancy Branch