



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated August 28, 2016

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on August 28, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Landlord by mailing, by registered mail to where the landlord resides on August 31, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated August 28, 2016?

Background and Evidence

The tenant previously owned the house. However, in March 2013 the rental property was sold under foreclosure to the landlords. The tenancy began on March 1, 2013. The present rent is \$700 per month payable in advance on the first day of each month. The tenant testified he paid a security deposit of \$700 at the start of the tenancy. The landlord testified no security deposit was paid. It is not necessary to decide this issue.

The landlord seeks to end the tenancy based on the following evidence:

- The tenant is in conflict with the upstairs tenants and he has been unwilling to talk to the landlord and the upstairs tenant to resolve the difficulties.

- The complaints relating to the upstairs tenant amount to the normal use of the rental property (walking on the hardwood floors).
- The tenant initially refused to allow the exterminators to come into the rental unit and treat it.
- On many occasions the tenant has used profanity in my presence, slammed the doors and has been aggressive and uncooperative.
- The landlord referred to a letter from the upstairs tenants dated September 11, 2016 which states that the tenant has negatively impacted their lives. His behavior is erratic and explosive causing them to feel unsafe and uneasy living at this location. They complained about the unsanitary condition of his rental unit. He pressed the doorbell a number of times and called the fire department about a spill of gasoline in the garage when it was not necessary.

The tenant testified as follows:

- He has never been in conflict with the landlord and never been disrespectful.
- He has had a conflict with the upstairs tenants over their shared mailbox. They put returned to sender on it his mail and left other pieces showing so that the security of the mail is at risk.
- He denies slamming the door on the landlord.
- He denies refusing the landlord access for an exterminator to deal with the rat problem. He also testified the landlord can bring in an exterminator to deal with a flea problem. However, he refused the landlord's demand that he take his dog to a vet to get a certificate the pet is free of fleas.

Grounds for Termination:

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

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

Analysis:

This is a difficult case. One can appreciate the frustration of the landlord as the tenant has not cooperated in efforts to resolve problems. However, after carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- While I determined the tenant has been difficult I further determined that the misconduct does not amount to significantly interfering or unreasonably disturbing the landlord or another tenant. There is insufficient proof that the rat problem was caused by the tenant. The tenant has allowed the landlord access for the exterminator. He also stated that the landlord can bring in the exterminator to spray for fleas.
- There is a dispute between the tenant and the upstairs tenants. Based on the evidence I determined both sides are responsible and have not behaved in a civil manner with each other. There is insufficient evidence to determine the tenants actions amounts to significant interference or an unreasonably disturbance.
- The landlord failed to prove the actions of the tenant have seriously jeopardized the health and safety of the landlord or another occupant.

Determination and Orders:

As a result I ordered that the one month Notice to End Tenancy dated August 28, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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 27, 2016

Residential Tenancy Branch