



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC

Introduction

This was a cross-application hearing.

On October 27, 2016 the tenant applied to cancel a one month Notice to end tenancy for cause that was issued on October 26, 2016.

On November 8, 2016 the landlord applied requesting an order of possession based on the one month Notice to end tenancy for cause disputed by the tenant.

The tenant entered the conference call hearing at the scheduled start time of 9:00 a.m. The landlord entered the hearing at 9:07 a.m. I introduced the parties. Both parties were affirmed.

The tenant supplied a Canada Post registered mail tracking number as evidence of service of the hearing documents to the landlord, sent on October 27, 2016.

The landlord said that the tenants' hearing documents were not received. The landlord stated that a registered mail notice was not delivered.

The landlord said that the tenant was personally served with the documents on December 2, 2016; which is the date of the hearing. The landlord did not provide clarification regarding this date provided. The landlord said that he could not recall the time service was completed but that everything was done properly and that service was completed in person without anyone accompanying the landlord. The tenant said that the landlord served a copy of documents that the tenant had sent the landlord.

While considering service it was pointed out that the landlord did not have a witness to service. The landlord then stated that another tenant was with him at the time the hearing documents were given to the tenant. I explained that the landlord was providing contradictory testimony and that contradiction affects his credibility.

The parties reached agreement accepting that both applications could be considered and the hearing proceeded.

The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. The hearing proceeded on oral testimony.

After multiple outbursts made, particularly by the landlord, the parties were each warned that interruptions would not be tolerated. The landlord engaged in name-calling and was warned that the hearing process is respectful and that type of behaviour would not be tolerated. The landlord apologized.

Preliminary Matters

The landlord and tenant each had another party with them. Neither of those individuals participated in the hearing.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on October 26, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The tenancy commenced in December 2015. Rent is due on the first day of each month. A tenancy agreement was not signed. The tenant lives in one of 20 units in the building.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on November 30, 2016.

The reasons stated for the Notice to End Tenancy are that the tenant has:

- allowed an unreasonable number of occupants in the unit; and

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;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- put the landlord's property at significant risk; and

That the tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or well-being of another occupant;
- jeopardize a lawful right or interest of another occupant or the landlord; and that

The tenant has

- breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so;
- knowingly given false information to a prospective tenant or purchaser of the rental unit; and
- That the rental unit must be vacated to comply with a government order.

The landlord confirmed that there is not a government order that has been issued.

The landlord did not supply any evidence of the tenant having any contact with prospective tenants; only that the tenant is disturbing other tenants.

The landlord did not set out details of any written notice supplied to the tenant in relation to breach of a material term of the tenancy agreement. There is no written tenancy agreement.

In relation to illegal activity the landlord said there are people coming in and out of the tenants' unit and that it is not hard to figure out there are drugs. When asked, the landlord said that the police had been there many times. The landlord could not supply any dates of these alleged visits by the police. The landlord said the police have told him their hands are tied and there is nothing they can do. There is no doubt in the landlords' mind that drugs are an issue. The landlord said he bangs on the tenants' door but she will not respond.

The landlord said the tenant has dogs coming and going from the unit and they make messes in the hallways. The tenants' guests smoke in the hallway which causes the fire alarms to go off. The fire department attends at a cost of \$1,000.00 per visit.

The landlord said he has letters from other tenants and the business next door. Everyone is getting fed up with the tenants' behaviour and other tenants are threatening to move out. The landlord read from several letters of complaint. The landlord did not have those individuals present, to be cross-examined.

The tenant yells frequently, she walks around with a syringe behind her ear, stomps up and down the stairway and has dragged a wheelchair down the stairs which caused noise. The tenant stomps up and down the stairs. The landlord said it is a horror show and that he is fit to be tied. The tenant shows no respect.

The tenant said the landlord is lying and was shown when the landlord lied about service of the hearing documents. The tenant stated the police have not been to the rental unit.

The tenant does not have dogs in the rental unit. The tenant stated the landlord just lies and calls the tenant names. The tenant said that none of her guests have set off the fire alarm. The landlord did ask the tenant about the alarms.

The tenant said that the agent for the landlord started work just one month ago and the tenant believes the agent is "out to get me." The tenant said there was one occasion when she took her husbands' wheelchair down the stairs early in the morning on the way to the hospital. The chair did cause a lot of noise and likely disturbed the landlord. The tenant did not mean to cause that disturbance and now uses a stairway that is not close to the agents unit.

Analysis

The hearing proceeded on the basis of a mutual agreement of the parties to do so; based on oral testimony.

When a tenant applies to dispute an eviction Notice the landlord has the burden of proving the reasons on the Notice.

The other tenants who the landlord said are being disturbed were not brought to the hearing so that they could be cross-examined. The tenant has a right to cross-examine the accusers. Therefore, in the absence of the opportunity to question those who accuse the tenant, I have given little weight to the several letters read by the landlord.

The landlord did not supply evidence such as dates disturbances occurred, what steps the landlord took to investigate specific alleged incidents or any other detail. Despite several requests made during the hearing for specific information, the landlord provided what I find was a general list of complaints with no evidence to support those allegations.

Any complaint made by a local business has no relevance to the tenancy.

There was no evidence before me to convince me that the tenant is engaging in illegal activity. The landlord has determined that multiple guests coming and going from the rental unit is a sign that drug activity is occurring. Other than an allegation, the landlord provided nothing to support what I find is a suspicion of drug activity. If the police have said that their hands are tied; it is difficult to understand how the landlord can allege there is illegal activity.

There was not an order issued by local government; this was confirmed by the landlord.

The landlord appears to have selected a reason on the notice that the landlord misunderstood. The landlord confirmed the tenant has not had any contact with any prospective tenants.

There was no evidence before me that the landlord has issued any written instruction to the tenant. In the absence of a written tenancy agreement the parties are bound by the

standard terms in the Regulation. There was no material term that has been agreed to by the parties.

Therefore, in the absence of any evidence that supports the reasons given on the Notice to end tenancy I find that the one month Notice to end tenancy for cause issued on October 26, 2016 is cancelled. The Notice is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

The landlords' application is dismissed.

Conclusion

The one month Notice to end tenancy for cause issued on October 26, 2016 is cancelled.

The landlords' application is dismissed.

This decision is final and binding and 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: December 02, 2016

Residential Tenancy Branch