



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KI-LOW-NA FRIENDSHIP SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute a One Month Notice to End Tenancy and other issues.

The tenant and two agents for the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agents confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on November 01, 2016. Rent for this unit is \$640.00 per month due on the 1st of each month.

The landlord's agent TL testified that the tenant was served a One Month Notice to End Tenancy for Cause on February 27, 2017 by posting the Notice to the tenant's door. A copy of the Notice has been provided in documentary evidence and has an effective date of March 31, 2017. The Notice provides the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) *Damaged the landlords' property*
 - (ii) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) *Jeopardized a lawful right or interest of another occupant or the landlord*

TL testified that the evening before the Notice was served the tenant had beaten up his girlfriend; she was covered in blood and went to a neighbour who took her in. Neighbours had called the police and the police arrived and arrested the tenant. TL provided the police file number.

TL testified that other tenants in the building are afraid of the tenant and will not make written complaints against him. The tenant was allowed back into the building when he was released from custody and TL believes there is a non- contact order between him and his girlfriend. The following day the police escorted the tenant's girlfriend into his unit to collect her belongings.

TL testified that the tenant has also smoked on the terrace in the designated smoking area but does not dispose of his butts properly. TL testified that the tenant has jeopardized a lawful right or interest of other occupants because they no longer feel comfortable in the building and fear that the tenant may cause them physical harm.

TL testified that they have accepted rent from the tenant for April but for use and occupancy only. The landlord seeks an Order of Possession for the end of April, 2017.

The tenant disputed the landlord's claims. The tenant testified that he did not beat his girlfriend up it was nothing more than an argument and should just have been a noise complaint. The tenant testified that his girlfriend was not covered in blood she had taken the tenant's keys and as he tried to take them back she fell. It was another senior tenant that took her into her unit and someone else called the police. The tenant testified that his girlfriend is doing all she can to have the charges against him dropped.

The tenant calls his girlfriend as a witness. The witness testified that she and the tenant had an argument and things were misinterpreted. A neighbour called the police and the police made everything out to be worse than it was. The witness agreed she was intoxicated at the time and is doing whatever she can to have the charges against the tenant dropped. The witness testified that the tenant did not assault her and it was just a verbal argument. The witness testified that she was not covered in blood and a neighbour took her in and got things out of context. The witness testified that nothing has happened like this before.

The landlord's agents declined to cross examine the witness or the tenant.

TL testified that the tenant has been served warning letters before about noise but no warning letters have been served regarding any illegal activities. Other tenants have made complaints about the tenant about arguments heard from his unit.

The tenant declined to cross examine the landlord's agents.

The tenant testified that there was one occasion he had to rush out to a doctor's appointment when he forgot to turn his TV off. The tenant testified that he rarely goes out to smoke and does not have his own patio to smoke on but has not damaged the landlord's property. The tenant testified that if the senior lady who took his girlfriend in

was scared of the tenant then he wonders why she still knocks on his door since this incident to ask the tenant to do jobs for her.

TL testified that this incident is an accumulation of other noise complaints. The tenant has made other female tenants in the building feel uncomfortable; there have been incidents when the tenant has been intoxicated. When the tenant was served the Notice he came to the landlord's office and was asked to leave because he was intoxicated.

Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows:

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist, as set out on the Notice to End Tenancy, to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord's agent described an incident in which the tenant was alleged to have beaten up his girlfriend and was duly arrested. While assault on another person can be considered as an illegal activity, the tenant and his girlfriend, who attended the hearing as a witness, both testified that the tenant did not in fact beat up or assault his girlfriend it was a merely an argument that occurred between them which neighbors construed as an assault and for which the police were called and arrested the tenant.

The landlord alleges the tenant stands outside in the smoking area on the terrace and smokes and throws his cigarette bugs into the yard; however, smoking is not an illegal activity and there is insufficient evidence from the landlord to show the tenant has engaged in illegal activity that has damaged the landlords' property.

As the landlord has no further evidence to support this allegation of assault then I must find there is insufficient evidence that an illegal activity took place that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or that has jeopardized a lawful right or interest of another occupant or the landlord.

In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I do however caution the tenant that if he continues to make excessive noise in his rental unit that disturbs other tenants or the landlord then this, standing alone, could jeopardize his tenancy in the future.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated February 27, 2017 is cancelled and the tenancy will continue

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: April 07, 2017

Residential Tenancy Branch