



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a One Month Notice to End Tenancy for cause.

The tenant, a legal advocate for the tenant and the landlord attended the conference call hearing. The parties were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenant provided limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord 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 One Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2013 for a month to month tenancy. Rent for this unit is \$575.00 per month due on the 1st of each month.

The landlord provided testimony first as to the reasons given on the One Month Notice (the Notice). The landlord testified that the tenant was served with the Notice on February 28, 2017 by posting the Notice to the tenant's door. The Notice has an effective date of March 31, 2017. The tenant confirmed that he received the Notice on February 28, 2017 and filed his application to dispute the Notice on that date. 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*
 - (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.*
- 2) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (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*

The landlord testified that on November 06, 2013 the landlord and her daughter were in the building when they saw the tenant punch another tenant. This incident was very scary for the landlord and her daughter. The landlord did not do anything about it at that time as it was a crazy situation. More recently the landlord's caretaker informed the landlord that the tenant had punched another tenant off site. The landlord has to now consider all the tenants safety because of the actions of this tenant. The tenant has also caused plumbing issues in his unit when he flushed a sock down the toilet. The tenant was seen by the landlord throwing a lighted cigarette out of his window with no regard to the safety of anyone below. The landlord testified that she has heard the tenant play his radio or TV very loudly which disturbs other tenants. The caretaker of the building has also reported that he has seen the tenant bringing in bags of garbage and although they

have not seen what is in the bags the caretaker did see a bag of garbage in the tenant's tub.

On one occasion the tenant was seen by the caretaker laying on the floor rubbing ketchup into his own face. The caretaker took the tenant into his own unit to assist him. The tenant has been aggressive towards the caretaker and has made threats against other tenants and businesses about their loud music. The landlord testified that they have received complaints from other tenants and the businesses' below about the tenant. On another occasion the police were called concerning the tenant but they said they had more important things to do but did advise that the tenant should not be left alone. A phyciertrist has called asking questions about the tenant's actions and reactions.

The landlord agreed the tenant has only been sent one warning letter in July, 2016 about fighting and warning him that it could result in an eviction. The landlord seeks to have the Notice upheld and requested an Order of Possession effective on April 30, 2017 to give the tenant time to find somewhere else to live.

The tenant disputed the landlord's claims. The tenant testified that the incident that occurred that the landlord and her daughter witnessed was because another tenant was threatening the landlord and the tenant went to defend them as the landlord's daughter was crying.

The tenant's advocate asked the landlord what incidents she has personally witnessed. The landlord responded the tenant playing his music loudly and throwing a cigarette butt out of the window. There are also plumbing issues in the tenants unit. The tenant's advocate asked the landlord when was the last time she heard loud music from the tenant's unit. The landlord responded that she does not go to the building much but it is loud whenever she is there. The tenant's advocate asked how the landlord knows this is coming from the tenant's unit. The landlord responded that it has been loud when she

has knocked on his door and he had to turn it down to hear the landlord. The rest of the allegations were told to the landlord by her caretaker.

The tenant's advocate asked the landlord why she did not put anything about the plumbing issues on the Notice. The landlord responded that she must have checked the wrong box. The tenant's advocate asked the landlord if she witnessed the tenant punching another tenant offsite. The landlord responded no she was informed of this by her caretaker. The tenant's advocate asked the landlord how an incident with the tenant putting ketchup on his face would affect other tenants. The landlord responded that it affected her caretaker. The tenant's advocate asked the landlord if she knows what was in the garbage bags the tenant brought into the building. The landlord responded that her caretaker thought it was garbage and they have to worry about pests.

The tenant's advocate asked the tenant if he punched another tenant outside the building. The tenant responded that this man attacked the tenant and the tenant has been complaining about that man for over four years. The tenant only fought him because he attacked the tenant over five blocks away from the building. The tenant was just trying to defend himself.

The tenant testified that he is a clean person and he keeps his room clean. He does not bring in garbage; he brings in clothes and shoes that people give him to sell on a Sunday market. The tenant disputed that he makes loud noise in his unit he testified that he works long hours every day and the landlord knows nothing about his life. When he gets home from work he is very tired and does not play loud music or have his TV on loud. Two neighbouring tenants were asked if the tenant had disturbed them and they agreed they had not been disturbed and they also work long hours. The tenant testified that the landlord's caretaker is a junkie and the police know about him.

The tenant's advocate states in her final submission that the landlord has not met the burden of proof concerning the reasons put on the Notice. She speaks about damage to the unit yet this is not included on the Notice. The first fight occurred when the tenant

was defending the landlord in 2013 and nothing was done at that time. The second fight occurred after the tenant was attacked and that was offsite and had nothing to do with the tenancy. The tenant's advocate states that everything else is hearsay and the tenant's neighbours have not complained about him and finally the only written warning was sent to the tenant in July 2016 with no further warnings about anything since then. The tenant therefore seeks to have the Notice cancelled and for the tenancy to continue.

The landlord testified that she agreed the tenant did come to her aid when she was having an argument with another tenant but this was not the right way to deal with the situation.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After consideration of the above, I find there is insufficient evidence to prove the reasons listed on the One Month Notice issued February 28, 2017. The landlord has not established that the tenant has disturbed other occupants or the landlord, the landlord has not established that the tenant seriously jeopardized the health, safety or lawful right of another occupant or the landlord and the landlord has not established any illegal activity that would give me reason to end this tenancy. If the tenant rushed to aid the landlord when he felt they were being attacked by another tenant and this incident

occurred four years ago then this is certainly insufficient reason to end the tenancy now; further to this if the tenant was defending himself from attack in a place not located on the rental premises then again this is insufficient reason to end the tenancy.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. Accordingly, I uphold the tenant's application and the One Month Notice issued February 28, 2017 is hereby cancelled and is of no force or effect.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause 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 03, 2017

Residential Tenancy Branch