



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 the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 30, 2017.
- b. An order to recover the cost of the filing fee.

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 one month Notice to End Tenancy was personally served on the Tenant on May 30, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Landlord on June 7, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 30, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began in June 2007. The present rent is \$1160 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$437.50 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:

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

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

- They have received multiple complaints from other tenants on the rental property about the conduct of the Tenant.
- The landlord testified the tenant is harassing the tenant from another building.
- The tenant has made multiple complaints about the conduct of a tenant in another building on the rental property that the landlord has determined is without basis.
- The tenant has alleged this other tenant is smoking marijuana and drinking in the public area but there is no evidence of this.
- The tenant has videoed the other tenant on separate occasions alleging the other tenant is breaking the rules.
- The tenant has complained about the other tenant playing his music too loud. The landlord has investigated and determined the music was not loud.
- The rules of the rental property permitted smoking in the rental unit and the common area until approximately one year ago. At that time the rules changed and smoking is now prohibited in the common area.
- Witness 1 is the building manager for the landlord. He testified the other tenant has come to his unit on multiple occasions complaining about the conduct of the Tenant. He has never witnessed the other tenant taking illegal drugs of any sort. He has never witnessed the other tenant abusing alcohol.
- The landlord provided a letter from the other tenant.

The tenant gave the following testimony:

- The other tenant has breached the rules and has broken the law since 2015.
- He has reported his misconduct to the landlord but the landlord fails to do anything to rectify the situation.
- He has reported the misconduct of the other tenant to the police. They have investigated and told him this is a civil matter. He should take photos of the misconduct and give it to the landlord.
- The problems began in the summer of 2015. The tenant provided videos showing the other tenant sunning himself in a chair in the common area. The other tenant was intoxicated.
- Second hand smoke from the other the tenant seriously interferes with his enjoyment of the rental property.
- The other tenant plays music so loud that it seriously interferes with his enjoyment of the rental property.
- The tenant testified the other tenant's misconduct occurs on a regular basis.

Analysis:

After carefully considering all of the evidence presented at the hearing I determined the complaints of the tenant about the conduct of the other tenant are without basis. I am satisfied after hearing the testimony of the parties and viewing the video evidence as to the following:

- The music played by the other tenant as evidence in the video produced by the tenant is not excessive and does not amount to a breach of the covenant of quiet enjoyment.
- I determined based on the evidence presented that the tenant's complaints are unreasonable and not supported by the evidence. The other tenant has a right to sit in the sun in the common area. The tenant is offended by the other tenant sitting with his shorts on (shirt take off). The conduct of the other tenant does not amount to a breach of the covenant of quiet enjoyment.
- The tenant failed to prove the other tenant was illegally smoking marijuana.
- The complaints of the other tenant smoking cigarettes in the common area occurred at a time when the rules on the apartment permitted it.
- I find that the tenant's action in the video taping the other tenant was provocative and inappropriate.
- I determined the landlord acted appropriately in investigating the complaints.
- I determined based on the evidence presented that the landlord would not have been successful in an application to end the tenancy of the other tenant.

However, despite my conclusion above I determined the landlord has failed to establish sufficient grounds to end the tenancy for the following reasons:

- The other tenant did not testify at the hearing. It is impossible to determine whether the conduct of the tenant has significantly interfered with or unreasonably disturbed him. The letter gives some evidence as to the impact of the tenant's conduct but is not sufficient to make an order ending the tenancy. Had the other tenant testified the results of this decision might have been different.
- The evidence given by the landlord as to the affect the tenants have had on them is not sufficient cause to end the tenancy.
- Given my decision above it is not necessary for me to consider with the complaints of a tenant from another building in the complex amounts to "an occupant" as required under section 47 of the Residential Tenancy Act as I determined the landlord has failed to present sufficient proof on the merits.

Section 28 of the Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Act does not give the tenant the right to be free from noise. That is impossible in a city and in an apartment complex. The Act give the tenant the right to freedom from “unreasonable disturbance.” Similarly, the tenant should be aware of the provisions of section 28(a) which gives all tenants the right to “reasonable privacy.”

As a result I ordered that the Notice to End Tenancy dated May 30, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the tenant's claim to recover the cost of the filing fee as I determined the tenant has brought about this situation by his unreasonable actions.

This decision is final and binding on the parties.

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: August 2, 2017

Residential Tenancy Branch