



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On October 2, 2017, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause dated September 29, 2017, ("the 1 Month Notice") be cancelled.

The hearing was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The Tenant was assisted by an advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

Issues to be Decided

- Does the Landlord have cause to end the tenancy and is he entitled to an order of possession?
- Should the Notice to End Tenancy be cancelled?

Background and Evidence

Both parties testified that the tenancy commenced around February 2015, as a month to month tenancy.

The Landlord testified that he received complaints from other occupants of the rental property about the Tenant smoking and making noise.

The Landlord testified that a 1 Month Notice To End Tenancy For Cause was served to the Tenant on September 29, 2017.

The reasons for ending the tenancy within the 1 Month Notice are as follows:

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

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Tenant has engaged in illegal activity that has, or is likely to:

- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Landlord provided documentary evidence of a signed complaint from an occupant of the rental property. The complaint letter is not dated. The complainant states that the Tenant swears to himself while sitting outside which is disturbing for anybody. The complainant states that the Tenant smoked outside which may be the reason for his coughing and disturbing other Tenants.

The Landlord provided documentary evidence of an undated letter that states "excess noise from no.8 and playing guitar outside".

The remainder of the Landlord's documentary evidence regarding complaints does not contain any details.

The Landlord testified that he believes a warning letter regarding noise was issued to the Tenant by the property manager. The Landlord did not provide a copy of any warning letters issued to the Tenant.

The Tenant testified that the letters of complaint are from acquaintances of the Landlord's property manager.

The Tenants advocate submitted that the Landlord's documentary evidence of complaints is unclear as it does not contain details of what the witnesses observed.

The Tenant testified that he plays his music at a conversation level. He testified that the volume is not loud, and that he is quiet after 9:00 pm.

The Tenant testified that the Landlord's property manager has never issued him a written warning about noise, but did mention it verbally once.

The Tenants advocate stated that the Tenant has a medical marijuana licence. The Tenant testified that he smokes outside.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In the matter before me, the Landlord has the onus to prove that the reasons in the 1 Month Notice are valid. I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy.

The Landlord was not a witness to the noise disturbances, and his property manager was not able to attend the hearing to provide testimony. In addition, the Landlord did not provide a copy of any written warnings issued to the Tenant. The documentary evidence provided by the Landlord does not establish that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In addition, there is insufficient evidence from the Landlord to establish that the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated September 29, 2017.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated September 29, 2017, is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: November 20, 2017

Residential Tenancy Branch