



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This is an application brought by the tenant requesting an order canceling a Notice to End Tenancy that was given for cause, and requesting an order for recovery of his \$100.00 filing fee

Some documentary evidence, photo evidence, and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

The landlord however testified that she did not give exact copies of the documents to the tenant, stating that the tenant would already have a copy of the tenancy agreement, and the persons who provided the witness evidence were afraid of the tenant and did not want to be identified.

Section 3.7 of the rules of procedure states:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, **identical documents (my emphasis)** and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

It is my decision therefore that I will not consider the evidence provided by the landlord, as identical documents were not served on the respondent.

Further, the landlord provided one document in a webarchive form, and I am unable to access that document. That document therefore has also not been considered.

I did however give the parties the opportunity to give their evidence orally, and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

Issue(s) to be Decided

The issue is whether or not the landlord has sufficient cause to end the tenancy with a one-month notice, or whether the notice should be canceled and the tenancy continue.

Background and Evidence

The parties agree that this tenancy began on May 1, 2016 and that the present rent is \$881.34 due on the first of each month.

The parties also agree that on October 17, 2017 the landlord served the tenant with a one-month Notice to End Tenancy listing the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
 - jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property.
- Tenant has not done required repairs of damage to the unit/site.

Landlord testified that the tenant has been unreasonably disturbing the other occupants of the rental property, and also a neighbor in the adjoining property.

The landlord further testified that, on November 3, 2017, the tenant became very threatening, knocking the phone out of one of her friend's hand, and calling her a cunt in a chink.

The landlord further testified that the police and ambulance service have also attended the house on numerous occasions however she was unable to provide exact dates and times of those alleged visits.

The landlord also testified that she believes the tenant has been selling drugs from the rental unit as she has been told by her other tenants that vehicles come to the rental unit frequently, for short periods of time.

The landlord gave no testimony or evidence to support the claim of damage to the rental unit or failure to do repairs.

The tenant testified that the landlord has no grounds whatsoever to evict him from the rental unit, as he is not disturbing other tenants and in fact he is the one that has been disturbed, by the neighbors and by the landlords frequent request for him to vacate.

The tenant further testified that he has not been selling drugs from the rental unit and has not been engaged in any illegal activity.

The tenant further testified that he is not caused any damage to the rental unit, and there is no damage for him to repair.

The tenant further testified that he did have a verbal altercation with the landlord on November 3, 2017 and he admits to using some foul language, however at no time did he threaten her. He states that he was angry because of the landlords ongoing attempts to evict him and as a result he did argue with the landlord.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is my finding that the landlord has not met the burden of proving her allegations against the tenant.

As stated above the landlord failed to provide the tenant with evidence that was identical to the evidence she provided to the residential tenancy branch, and therefore none of that evidence was considered.

In this case, therefore, it is just the applicants word against that of the respondent, and, although the respondent does admit that he did have a verbal altercation with the landlord during which he used some foul language, it's my finding that there is insufficient evidence to show that the tenant significantly interfered with or unreasonably disturbed the landlord, or that the tenant jeopardized a lawful right or interest of the landlord.

Further, this verbal altercation occurred after the Notice to End Tenancy was given and therefore cannot be considered part of the grounds given for ending the tenancy.

It is my decision therefore that I will be canceling the Notice to End Tenancy and ordering recovery of the \$100.00 filing fee.

Conclusion

Pursuant to section 62 of the Residential Tenancy Act I hereby order that the one-month Notice to End Tenancy dated October 17, 2017, is hereby canceled and this tenancy continues.

I further order pursuant to section 72 of the Residential Tenancy Act that the landlord bear the \$100.00 cost of the filing fee, and therefore the tenant may make a one-time \$100.00 deduction from future rent payable to the landlord.

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: January 16, 2018

Residential Tenancy Branch