



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was represented by his counsel. The corporate landlord was represented by its agent ES (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice and evidence and the landlord was duly served with the tenant's application for dispute resolution package.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began in December, 2008. The rental unit is one of 73 units in a rental building operated by the landlord.

The landlord testified that throughout the tenancy the tenant has caused unreasonable disruptions to the other occupants of the rental building. The landlord submitted into documentary evidence incident reports, warning letters and other correspondence regarding the tenant's disruption of other residents. The incident that triggered the present 1 Month Notice occurred on December 13, 2017 when there was a loud altercation involving the tenant which was disruptive to other residents on the floor.

Prior to the December, 2017 incident the landlord issued warning letters to the tenant in March, 2017 and December, 2016. The landlord testified that the tenant has engaged in a continuous pattern of disruptive behavior and they have issued multiple verbal warnings to the tenant of the consequences of their conduct. The landlord included in their written evidence incident reports and warning letters that were issued by the previous corporate landlord from 2012 to 2014.

The landlord testified that the tenant's disruptive behaviour includes loud noises throughout the night, intoxicated shouting in the rental building, passing out while intoxicated in common areas, verbal abuse of the landlord and others, and aggressive behavior.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. While it is clear from the evidence submitted that the tenant's conduct has not been beyond reproach, I find that there is insufficient evidence to warrant ending this tenancy for unreasonable disturbance of other occupants or the landlord.

The landlord's written evidence details incidents that occur throughout the tenancy. I find that there is a considerable length of time between the incidents referenced in the written materials. The incidents described pertain to noise complaints. There is insufficient evidence to determine that the noise is constant or occurs on a regular basis. While the landlord alludes to complaints from other residents there is only one written complaint from another resident in the written evidence.

The landlord also references incidents which occurred while the tenant was housed temporarily in a hotel while the landlord made repairs to the rental building. Tenant's counsel submits that incidents which occurred at temporary housing arranged by the landlord should not be considered as occurring within the tenancy. I disagree and find that the tenant's conduct while in accommodations arranged and supplied by the landlord while the rental unit is undergoing repairs to be within the tenancy agreement. I find that in such a case the staff of the hotel contracted by the landlord are acting as the landlord's agents in providing housing to the tenant. The tenant's conduct in the temporary accommodation and the interactions with the hotel staff are relevant.

Nevertheless, I find that there is insufficient evidence that the tenant's behavior while at the hotel has caused a significant and unreasonable disturbance. The landlord references an incident where the police were called but no copy of a police incident report was submitted. The correspondence with the hotel staff confirms that there was some disruptive behavior. However, I find that the brief mention of the tenant's conduct does not meet the threshold of showing that the tenant has unreasonably disturbed another occupant such that it warrants an end of a tenancy.

I do not find that the landlord has provided sufficient evidence to meet the burden of proof that the tenant's actions have given rise to cause to end this tenancy at this time. Consequently, I dismiss the landlord's 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues 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: March 5, 2018

Residential Tenancy Branch