



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated April 23, 2018

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 served on the Tenant by posting on April 23, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on May 4, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated April 23, 2018?

Background and Evidence:

The tenant moved into the rental property in 2010. The parties produced a tenancy agreement that indicates the tenancy stated on January 1, 2013. The rent is subsidized and the present rent is \$320 per month. The parties could not remember if a security deposit was paid.

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
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord

...

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

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

- She produced a letter from DS, the Caretaker of the residential property stating she was subject to extreme verbal abuse laced with profanities by the applicant. He tenant arrived at about 6:00 p.m. and started to verbally abuse her. He then gathered Easter decorations from the lobby table and started tossing them on the floor.
- Two other tenants came and tried to calm him down. The police were called and the tenant went to his room. She testified she feared for her safety.
- This is not the first time he has verbally abused her. It has happened many times in the past.
- Two other tenants wrote letters confirming they overheard the altercation and when they came from the room they saw the tenant verbally abusing DS.
- The landlord testified most of the residents of the rental property are seniors and she has had many oral complaints from other residents about the conduct of the tenant.
- As a result she wrote a breach letter to the tenant dated April 11, 2018 that stated that he would be evicted on April 23, 2018.
- She has another breach letter on file dated February 8, 2017 which was given to the Tenant after she received a complaint from another tenant that the applicant violently banged on her door late at night. The applicant told the landlord that it could not have been him as he was in hospital at the time. However, he failed to provide the landlord with documentary evidence that he was in hospital although he said he would.
- Many seniors in the rental property are afraid of the tenant. The tenant is 66 years of age.
- She felt she had to evict the tenant given the previous misconduct of the tenant and age of the other residents.
- On cross examination the representative of the landlord acknowledged the following:
 - DS is no longer employed by the landlord although she continues to live in the rental property. The landlord has received complaints about the conduct of DS.
 - The police report of the incident indicates there was an altercation but she is not aware of any criminal charges being laid.
 - The person who made the complaint that lead to the February 8, 2017 did not actually see the Tenant banging on the doors. .

The tenant gave the following evidence:

- He was in hospital at the time of the incident that led to the February 8, 2017 letter and he denies he was the person who banged on the door of the other resident.

- He admits that he got into an altercation with DS. However she was the person who provoked it. She gave him the finger when he arrived home and started verbally abusing him. The tenant denied that he used profanities.
- He produced evidence from 18 other residents attesting to his good behaviour.
- Witness #1 testified as follows:
 - She was a Board Member for the Society that operated the rental property from 2010 to 2016.
 - During that time she was not aware of any complaints about the conduct of the tenant.
 - The tenant was job sharing with DS at that time.
 - DS terrified her mother when her mother was 99 at the time and was living in the rental property.
 - There were complaints about the behaviour of DS.
- Witness #2 testified as follows:
 - She had an amiable relationship with DS. However, in 2015 DS threatened to evict me. On cross examination she denies that dispute between she and DS related to her watering plants when not permitted or locking the washroom door.

Analysis:

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient grounds to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy.
- DS and the other two residents who wrote the letters did not attend the hearing and give orally evidence. It is difficult to assess the seriousness of the disturbance in the absence of their oral testimony.
- The police report indicates there was an altercation but there does not appear to be any charges laid.
- The evidence indicates that the altercation is much more complex than just the tenant verbally abusing DS out of the blue. From the evidence presented and in the absence of oral testimony from DS I determined that DS provoked the incident.
- The breach letter of April 11, 2018 is not a breach letter as contemplated by the Act because it does not give the tenant a reasonable time to rectify the breach. The letter states the tenant will be evicted on April 23, 2018.
- The landlord failed to prove the tenant was the person who banged on the doors that gave rise to the breach letter of February 8, 2017.
- The oral testimony of the landlord who is the Property Manager that she has received complaints from other residents is at odds with the evidence produced by the tenant as to his good character.
- The landlord failed to prove that the altercation that occurred on March 31, 2018 amounted to a significant disturbance or unreasonable interference with another occupant or the landlord or amounted to seriously jeopardizing the health or safety or other lawful right of the landlord or another occupant.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to provide sufficient proof to establish cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated April 23, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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: June 20, 2018

Residential Tenancy Branch