



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This decision pertains to the Tenant's application for dispute resolution made on May 18, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice").

The Tenant, the Tenant's advocate (the "Advocate") and the Landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues of service.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision. In my instructions at the start of the hearing I advised each party that should they wish for me to accept and consider evidence that they need to present it to me.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that complies with the Act.

Issues

1. Is the Tenant entitled to an order cancelling the Notice?
2. If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an order of possession, pursuant to section 55 of the Act?

Background and Evidence

The Landlord testified that the Notice (dated May 2, 2018, served on the Tenant by registered mail on May 3, 2018, with an end of tenancy date of June 30, 2018) was issued as a means to “help the Tenant move into another location” where the Tenant would be able to get better medical treatment and support. The Landlord testified that they were working with the Tenant’s social worker in making this happen. The Landlord testified that the Tenant’s behavior is such that it is causing other occupants of the building to move out. The Landlord submitted various documents but did not submit any documentary evidence regarding any arrangement between her and the social worker.

The Landlord also testified about an incident on April 28, 2018, involving the Tenant making an excessive amount of noise in another rental unit, and ensuing complaints from other occupants about the noise. The Landlord submitted into evidence a copy of the Notice and various other correspondence, including copies of written complaints of other occupants regarding the noise.

The Tenant testified that, regarding the arrangement of which the Landlord spoke, “this is news [to me].” While the Tenant does have a support worker, there is no arrangement in place whereby the Tenant was to be relocated to a better location by way of eviction.

The Advocate submitted that they can only deal with the evidence provided, and the conduct alleged are insufficient grounds on which to issue the Notice, that the Tenant did not and has not engaged in any illegal activity, and that they have not ignored any previous order issued by an arbitrator, as indicated on the Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

While several boxes were ticked off on the Notice, the Landlord did not testify to any of the grounds except about the disturbances caused by the noisy Tenant on April 28, 2018. The Tenant went to visit another occupant in the building on that date and

essentially partied, drinking glasses of wine and listening to 80s music. The party appeared to have lasted until the next morning. The Landlord did not testify to other instances of the Tenant causing disturbances to other occupants.

The Landlord submitted multiple documents in response to the Tenant's application for dispute resolution, but she presented very little of it to me during the hearing. Rule 7.4 of the *Rules of Procedure* requires that "Evidence must be presented by the party who submitted it, or by the party's agent." I asked the Landlord more than once if she had anything to add regarding any of the grounds, but she did not provide anything further.

Taking into consideration all the evidence that was presented, and the testimony of the parties, including the submissions by the Advocate and the Landlord, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving any ground on which the Notice was issued. Further, while the Tenant undoubtedly had a rather noisy party on April 28, 2018, I do not find that this one occurrence sufficient to justify the ending of the tenancy.

Conclusion

Given the above, the Landlord's Notice, dated May 2, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is 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 Act.

Dated: July 5, 2018

Residential Tenancy Branch