



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DONLOR HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On October 12, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for Cause, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

Issue to be Decided

Should the One-Month Notice to End Tenancy for Cause, dated October 6, 2018 (the “Notice”), be cancelled, pursuant to Section 47 of the Act?

If the Notice is cancelled, should the Landlord receive an Order of Possession, pursuant to Section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

Although the Tenancy Agreement provided limited information, the Landlord and the Tenant agreed on the following terms of the tenancy:

The month-to-month tenancy began on December 12, 2011. The rent is \$920.00 a month and the Landlord was unsure if a security deposit was collected.

The Landlord stated that the new company took over the management of the building on January 1, 2018. Since that time, the Tenant has been causing disturbances, threatening neighbours and regardless of warnings, has continued to be a problem.

The Landlord testified and submitted documentation to demonstrate that the Tenant was formally warned, on September 19, 2018, about a complaint that alleged the Tenant allowed an excessive number of people into the building and that a strange odor was coming from his unit.

The Landlord stated that written notice was provided to the Tenant, on September 24, 2018, and suggested that two people who were smoking cigarettes and looking as if they were under the influence of something were looking for the Tenant. The Tenant was warned that this type of activity was unacceptable and must stop.

The Landlord issued a caution notice to the Tenant on October 3, 2018, that indicated that there have been complaints of "nefarious activities", including the smell of drugs coming from the Tenant's unit.

The Landlord and the Tenant agreed that the Notice was served on the Tenant in person on October 6, 2018 and had a move-out date of November 30, 2018. The Landlord confirmed that the Notice was served, as noted on Page 2 of the Notice, because the Tenant or a person permitted on the property by 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 jeopardize a lawful right or interest of another occupant or the Landlord.

The Landlord testified that someone in the residential property slid an offensive note under the door of one of the occupants. The Landlord stated that the Tenant admitted to it and the Landlord subsequently issued another caution notice to the Tenant, on October 8, 2018, to warn him that he is unreasonably disturbing his neighbours. The Landlord is requesting an Order of Possession for the rental unit for November 30, 2018, as stated on the Notice.

The Tenant stated that he is a senior and did not have any issues with the previous management. He stated that he is supported by the Assertive Community Treatment

Team and that they regularly visit him. The Tenant testified that he does not consume drugs and did not write the offensive note as claimed by the Landlord.

Advocate MJ testified that she has been visiting the Tenant on a regular basis and has never noticed any illegal activity in the rental unit.

Advocate AS testified that she has been visiting the Tenant regularly over the past few years and has never smelled any drugs or seen a guest visiting with the Tenant. She stated that there are no police reports, proof of illegal activity and that the allegations are based on the opinions of a few.

Analysis

The Landlord has served the Notice on the Tenant based on Section 47(1)(e) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the activities of the Tenant adversely affected the quiet enjoyment, security, safety, or physical well being of another occupant and that these actions were illegal. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the Notice are valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I accept the Landlord's testimony that the Tenant may have disturbed other occupants or affected the quiet enjoyment of his neighbours. However, based on the Landlord's evidence, I find that they failed to provide sufficient evidence to prove that the Tenant's actions were illegal and therefore, a breach of Section 47(1)(e) of the Act.

The Landlord served a Notice on the Tenant with specific reasons as to why the tenancy should end. Because I found these reasons were not valid and not in accordance with Section 47(1)(e) of the Act, I cancel the Notice and order that the tenancy will continue until ended in accordance with the Act.

The Tenant's Application has merit and the Tenant should be compensated for the cost of the filing fee, pursuant to Section 72 of the Act.

Conclusion

I cancel the One-Month Notice to End Tenancy for Cause, dated October 6, 2018. The tenancy shall continue until it is ended in accordance with the Act.

I authorize the Tenant to deduct \$100.00 from a future rent payment, in compensation for the cost of the filing fee and in accordance with Section 72 of 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 21, 2018

Residential Tenancy Branch