



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATTON VENTURES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 9, 2018 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated October 31, 2018 (the "Notice").

The Tenant appeared at the hearing with A.M. to assist him. The Property Manager and Owner appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The Tenant and Property Manager provided affirmed testimony.

The Property Manager and Owner confirmed the correct name of the Landlord and I amended the Application to reflect this. This is also reflected in the style of cause.

The Tenant had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement in this matter between the Landlord and Tenant in relation to the rental unit. The tenancy started in April of 2007 and is a month-to-month tenancy. Rent is \$442.00 per month due on the first day of each month.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Property Manager. It has an effective date of November 1, 2018. The basis for the Notice is that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The parties agreed the Notice was served on the Tenant in person on October 31, 2018.

The Property Manager testified as follows. On October 31, 2018, the Tenant called the office and spoke to another person and left a message saying he does not want to deal with the Property Manager because she is a drug addict. She called the Tenant back because it is her job to do so and to deal with issues that arise. The Tenant did not want to speak to her. The Tenant accused her of doing drugs. The Tenant yelled at her and called her names. The Tenant hung up on her. She called her boss, the Owner, who told her to issue the Tenant the Notice.

The Property Manager testified that she felt threatened by the conversation. She said she felt like her name was being slandered. She said the volatile behaviour of the Tenant is not acceptable.

The Owner submitted that none of her staff are to be bullied or harassed. She said it is expected that the environment at the rental unit building will be harmonious and respectful. She said the Tenant continues to call and make accusations about the Property Manager.

The Owner testified that the Property Manager has managed the rental unit building for three years. She said her staff do not get upset when they have to deal with tenants and their issues. She said she has never had complaints about the Property Manager. She said her staff are not permitted to yell at tenants or speak to them in a negative way.

I asked the Property Manager about the statement of the Owner that the Tenant continues to call and make accusations about the Property Manager. The Property Manager confirmed there had been two calls, the first call from the Tenant to the other person in the office and the call from her to the Tenant.

The Tenant testified that he phoned the office and told the person he spoke to not to tell the Property Manager. He said he did not leave a message for the Property Manager. He acknowledged that he called the office and told the person he spoke to that he did not want to speak to the Property Manager because she is a drug addict. He agreed that the Property Manager called him back. He said the Property Manager used foul language during the call that he could not stand so he hung up on her. He denied that he yelled at the Property Manager. He denied that he called the Property Manager names. He denied that he used foul language.

Analysis

The Landlord was permitted to serve the Notice based on the ground noted pursuant to sections 47(1)(d)(i) of the *Residential Tenancy Act* (the "Act"). The Tenant had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

The parties agreed the Notice was served on the Tenant in person October 31, 2018. Based on our records, I find the Tenant disputed the Notice November 9, 2018, within the time limit set out in section 47(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Here, the Property Manager and Tenant gave two different versions of what occurred during their phone call. The Landlord did not submit or provide any evidence to support the Property Manager's version of what occurred. I find the Landlord has failed to meet their onus to prove that the Tenant accused the Property Manager of doing drugs, yelled at her and called her names during their phone call.

I note that I do not find the submissions of the Owner relevant. The Owner spoke about the expectations of her staff and said she had never received complaints about the

Property Manager. This type of general evidence does not assist me in determining what occurred during the phone call between the Property Manager and Tenant.

I do accept that the Tenant called the office and told the person he spoke to that he did not want to speak with the Property Manager because she is a drug addict as he acknowledged doing so. While this behaviour may be inappropriate, I am not satisfied that it rises to the level of a significant interference or unreasonable disturbance of the Landlord. This was one call on one day. There is no evidence before me that there was a pattern of this type of behaviour by the Tenant. When asked about the statement of the Owner that this was a continuous issue, the Property Manager confirmed that there were only the two calls.

In the circumstances, I am not satisfied that the Landlord has established the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue 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 *Act*.

Dated: December 20, 2018

Residential Tenancy Branch