



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on January 21, 2019. The tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47(4) of the Act.

A dispute resolution hearing was convened on March 4, 2019 and the tenant and the landlord attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Neither party raised any issues with service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application is considered in my decision.

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's notice to end tenancy complies with the Act.

Issue to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The landlord testified that the tenancy started approximately two years ago, and that monthly rent is \$850.00. The tenant paid a security deposit of \$425.00; there is no pet damage deposit.

The landlord explained that the Notice (a copy of which was submitted into evidence) was issued in person on January 11, 2019 by the landlord. The reason why the Notice was issued was, according to the landlord, “because of drug trafficking” between the rental unit and the next door rental unit.

According to the landlord and substantiated by a submitted copy of a policy Information to Obtain (a warrant), the local police were conducting surveillance of the property and, because of suspected drug trafficking, raided the rental unit and the tenant’s neighbour’s rental unit. During their raid the police kicked the front door in and arrested the tenant. Later that day, he was released without being charged. His neighbours, however, were charged and have an upcoming court appearance.

The tenant testified that it was, as commented by the landlord, his neighbours who were charged, not him. He said that the reason he was seen associating with them was because when you live in a multi-unit apartment building you should try to live in peace with others. The police had made an honest mistake in breaking down the door, and even the police canine unit was unable to locate anything that might incriminate him. He was, as was noted, released with no charges.

The tenant further testified that it is unfortunate that the landlord has had the other tenants get arrested and that they were engaged in such activity, but that it is “the landlord who move them in.” He also remarked that there had been no issues between him and the landlord prior to the drug-trafficking neighbours moved in. (The landlord agreed with this statement.)

The parties briefly talked about a recent 10 Day Notice to End Tenancy for Unpaid Rent that the landlord had recently issued, and some discussions about how long the tenant can stay in the rental unit if he gets caught up with the rent. I explained that this issue was not before me and that I could not make any findings of fact or law about the 10 Day Notice to End Tenancy for Unpaid Rent.

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. Here, the Notice indicated that the tenancy was to end because the causes fell within sections 47(1)(e)(i) and (ii) of the Act: "Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: damage the landlord's property [and] adversely affect the quiet enjoyment, security, safety or physical damage to the unit/site or property/park." The Details of Cause(s) section of the Notice states that on "JAN 9 POLICE BREAK DOWN DOOR HANDCUFFED TENANT WHO WAS RELEASED THAT NIGHT."

The landlord submitted a police Information to Obtain, which is a legal document provided to a judge by a police officer who seeks a search warrant under the *Criminal Code*. As a former Crown prosecutor, I had the opportunity to review many of these information to obtain documents, and they would often contain references to third parties and witnesses to potential criminal activity. However, unless the police charge an individual with an offense under the *Criminal Code*, the information in this document does not conclusively prove that the subject individuals are engaged in illegal activity. Had the police charged the tenant, then it would be a situation where I could find that he had engaged in illegal (that is, criminal) activity. But they did not. They released him later that day, and there is no additional evidence before me to find that the tenant engaged in illegal activity. And, while the landlord made a passing reference to the tenant carrying a duffel bag, this is not conclusive proof of illegal activity, however suspicious it might appear. As the tenant did not engage in illegal activity, the remainder of the two grounds is rendered moot and need not be considered.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was issued.

The One Month Notice to End Tenancy for Cause, issued on January 11, 2019, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

I hereby order that the One Month Notice to End Tenancy for Cause, issued on January 11, 2019, is cancelled and of no force or effect. The 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: March 4, 2019

Residential Tenancy Branch