



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on August 18, 2021

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The landlord confirmed they received the tenant’s evidence. The tenant stated they received the landlords evidence package; however, they had only received one package and wants to clarify if additional evidence has been submitted.

The landlord stated they served the tenant with two packages of evidence. The second package was related to the subsequent behaviour of the tenant since the Notice was issued and was sent by registered mail on December 16, 2021. The landlord provided the Canada post tracking number at the hearing. The Canada post history shows the tenant was left a notice card to pickup the package, which they have not done so. I find the tenant was served in accordance with the Act and was deemed served on December 21, 2021, which meets the requirements of the Residential Rules of Procedures as it was deemed received 7 days before the hearing. However, as this is related to subsequent behaviour I find it is not relevant to the Notice and will not be considered at today’s hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agree that Notice was served on the tenant. The tenant disputed the Notice within the statutory time limit.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The landlord testified that the tenant has been issued prior warning letters about violations of their tenancy agreement. The landlord stated that they had issued a prior notice to end tenancy and on January 21, 2021 the tenant attended their office indicating they never received the warning letters or the notice to end tenancy. The landlord stated at that time they went through all the documents with the tenant.

The landlord testified that on July 14, 2021, they received a complaint from one of the neighbours that the tenant has been harassing them and has been filming the female and her child. Filed in evidence is an email dated July 14, 2021.

The landlord testified that on July 19, 2021, they received noise complaints from multiple tenants at 8:20 pm that the tenant was yelling and swearing at the police, unreasonably disturbing other occupants..

The landlord testified that on August 15, 2021, they received a complaint that the tenant was uttering threats to another occupant and then threw an egg at them. Filed in evidence is a copy of the complaint to the landlord. The landlord stated that they then decided that they could no longer work with the tenant and issued the Notice.

The landlord stated that since the Notice was issued the tenant has engaged in harrassing behaviour, has been yelling off their balcony at the neighbour and yelling again at the police.

The tenant testified that any evidence related to the neighbour is not relevant and should not be considered as they do not live in the building. The tenant stated woman is just “crazy” and they called the police on them. The tenant stated they were not filming them; however, they did have their video recording on and was filming a squirrel that was on their fence.

The tenant testified that they deny anything occurred on July 19, 2021

The tenant testified that they never uttered any threats to the other occupant or threw an egg at them.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- serious jeopardized the health, safe or lawful right of another occupant or the landlord.

In this case, the Notice was issued for 3 incidents. The first relates to the harassment of a neighbour. While the Act does not contemplate neighbours; however, this is a written term of the tenant’s tenancy agreement and the tenant is obligated to comply with that agreement. Having said this, the Notice was not issued for a breach of a material term of the tenancy agreement, and I make no finding on the validity of this term of the tenancy agreement that relates to a neighbour who is not an occupant of the building.

The second incident that occurred on July 15, 2021, the evidence of the landlord was that the tenant was outside the building at 8:20 pm yelling and screaming at the police unreasonably disturbing the other occupants. The tenant denied such incident occurred, I find without any other evidence such as witness statements from any of the occupants,

a copy of the police report that the landlord has failed to provide sufficient evidence to support the reasons stated in the Notice

The third incident occurred on August 15, 2021, where another occupant issued a complaint that the tenant utter threats and threw an egg at them. The tenant denied the incident. I find without any further evidence from the landlord, such as a signed statement from the other occupant stating what threats were uttered or any evidence that an egg was thrown that the landlord has failed to provide sufficient evidence to support the reasons stated in the Notice.

Therefore, I find it appropriate to cancel the Notice. The tenancy will continue until legally ended. I have not considered any evidence relating to subsequent incidents that may have occurred after the Notice was issued.

I caution the tenant that any yelling, scream, harassing other occupants or loud noise could put their tenancy at risk.

I also caution the landlord that should they issue a new notice to end tenancy for subsequent issues, they must provide more details in the notice to end tenancy, such as dates, time and the specific details of the incident as failure to provide sufficient details in the notice to end tenancy may give cause to cancel the notice to end tenancy.

Conclusion

The tenant's application to cancel the Notice is granted. The tenancy will continue.

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: January 11, 2022

Residential Tenancy Branch