



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on July 04, 2008. The Agent for the Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was posted on the front door of the rental unit on March 13, 2009, which indicated that the Tenant was required to vacate the rental unit on April 30, 2009. The reasons stated for the Notice to End Tenancy were 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 and that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- A copy of a letter, dated August 11, 2008, in which the Tenant was advised that he cannot have unauthorized persons living in his rental unit
- The Agent for the Landlord acknowledged that this breach was corrected within a reasonable time after the letter, dated August 11, 2008, was received

Residential Tenancy Branch
Ministry of Housing and Social Development

- A copy of a letter, dated October 14, 2008, in which the Tenant was advised that there have been reports of noise coming from the rental unit and that he has visitors “at all hours of the night”
- The Agent for the Landlord acknowledged that the situation improved after this letter was given to the Tenant
- A copy of a daily security report, dated December 08, 2008, in which the security officer noted that the Tenant brought a female into the rental unit at 0010 hours and then left her unattended in his rental unit
- A copy of a daily security report, dated December 08, 2008, in which the security officer noted that the Tenant required access to the residential complex at 0130 hours as he did not have his keys
- A copy of a daily security report, dated December 09, 2008, in which the security officer noted that the Tenant required access to the residential complex at 0525 hours as he did not have his keys
- A copy of a letter, dated December 11, 2008, in which the Tenant was advised that there have been reports of noise coming from the rental unit, that he is allowing guests into his rental unit at “all hours of the night”, and that he is allowing unregistered tenants to use his keys
- A copy of a letter, dated February 02, 2009, in which an occupant of unit 211 indicates that people “coming from unit 206 and 611” are smoking crack cocaine in the stairwells
- The verbal testimony of the occupant of unit 211 who stated that until approximately two months ago he regularly observed the Tenant, and people he knows visit his rental unit, using crack cocaine in the stairwells. He stated that he has not observed this activity in approximately two months
- The verbal testimony of the occupant of unit 211 who stated that until approximately two months ago he observed the Tenant regularly argue with the occupant of rental unit #201 in the common areas of the complex. He stated that he has not observed this activity for at least one month
- The verbal testimony of the occupant of unit 211 who stated that until approximately two months ago he observed females enter the common men’s washroom, at which time he overheard noise that he believed was related to sexual activity, and then observed these people enter the Tenant’s rental unit. He stated that he has not observed this activity in since February or March of 2009
- A copy of a letter, date February 13, 2009, in which the Tenant was advised that there have been reports of noise coming from the rental unit, that he is allowing guests into his rental unit at “all hours of the night”, and that he is allowing unregistered tenants to use his keys, and that his guests are using illegal drugs in the stairwells

Residential Tenancy Branch
Ministry of Housing and Social Development

- A copy of a daily security report, dated February 26, 2009, in which the security officer noted that complaints were received from an unidentified occupant who complained that the Tenant and a tenant from another rental unit were allowing sex trade workers to use the common bathroom for employment purposes. The security officer indicates that the security officer checked the building and could not locate any areas of concern
- A copy of a daily security report, dated February 26, 2009, in which the security officer noted that the Tenant was in and out of the building all night and that he was bringing in women he believed were sex trade workers
- A copy of a daily security report, dated February 26, 2009, in which the security officer noted he believes one of the people visiting the Tenant is a drug dealer

The Tenant presented the following evidence and arguments in support of his application to cancel the Notice to End Tenancy for Cause:

- The Tenant denies being a drug user or using drugs in common areas of the residential complex
- The Tenant denies having any knowledge of his guests using the common areas for sexual purposes
- The Tenant agrees that he has previously allowed women to enter his rental unit, one of which was a sex trade worker, which has created problems, but he contends that these problems have been rectified
- The Tenant admits that he has previously had arguments with the woman residing in rental unit #201 but he contends they are now friends and he often stays with her as she is assisting with him vision problems
- The verbal testimony of the occupant of unit #201, who stated that she has previously been disturbed by the Tenant but they are now friends and he stays at her rental unit on occasion as she is assisting him with his vision problem
- The verbal testimony of the occupant of unit #201, who acknowledged she has argued with the Tenant in the common areas on two occasions in the past, but that this has not occurred for at least two months.
- The verbal testimony of the occupant of unit #201, who stated that she has never observed the Tenant or his guests use illegal drugs or engage in inappropriate sexual behaviour in the common areas
- The verbal testimony of the occupant of unit #201, who stated that the Tenant has visitors every two or three days.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. In reaching this conclusion I considered the following:

- The Landlord introduced no evidence of complaints or other documentation that would indicate that the comments in the letter dated October 14, 2008 were warranted
- The letter dated December 11, 2008, in which the Tenant was advised that he has had visitors “at all hours of the night” was reportedly based on a security report that indicates the Tenant brought one female into his rental unit around midnight and that he subsequently left her in his rental unit. There is no evidence to establish that this behaviour was repetitive, or inappropriate, or that it disturbed anybody
- The letter dated December 11, 2008, in which the Tenant was advised that he has allowed unregistered tenants to use his keys was reportedly based on a security report that indicates the Tenant was known to provide a female with access to his rental unit and subsequently needed to be provided with access to the rental unit as he did not have his keys. This does not constitute a disturbance or significant breach of the tenancy agreement as tenants are not prohibited from having guests or giving them unattended access to their rental unit
- The Landlord introduced no evidence of complaints of noise made by employees or other occupants that would warrant the comments in the letter dated December 11, 2008
- Although I acknowledge that another occupant of the residential complex reported that he regularly observed the Tenant and his guests using crack cocaine in common areas of the building, his evidence was contradicted by a close neighbour of the Tenant who denied ever observing this behaviour, although she would be more, or equally likely, to observe repetitive behaviour, given the close proximity of their suites. Given the contradictory evidence provided by these two occupants, I find that it is impossible to determine the facts without evidence from an additional witness
- Although I acknowledge that another occupant of the residential complex reported that he regularly observed guests of the Tenant using the common bathroom for inappropriate sexual activities, his evidence was contradicted by a close neighbour of the Tenant who denied ever observing this behaviour, although she would be more, or equally likely, to observe repetitive behaviour, given the close proximity of their suites. Given the contradictory evidence provided by these two occupants, I find that it is impossible to determine the facts without evidence from an additional witness

Residential Tenancy Branch
Ministry of Housing and Social Development

- The Landlord introduced no evidence of complaints or other documentation, other than the information provided by the occupant of rental unit #201, that would indicate that the comments in the letter dated February 13, 2009 were warranted
- Although I acknowledge the notes made by the security officer on February 26, 2009 regarding the complaint regarding sex trade workers that was received from an unidentified occupant, I find there is insufficient information to determine whether this was a complaint made by another occupant or a complaint made by the occupant of rental unit #201
- Although I acknowledge the notes made by the security officer on February 26, 2009 regarding the complaint regarding sex trade workers, I note that the security officer checked the area and found nothing to confirm the report
- Although I acknowledge the notes made by the security officer on February 26, 2009 regarding his observations that the Tenant is bringing sex trade workers into the rental unit, I am concerned regarding the lack of details regarding times and frequency of their visits and any evidence that establishes their presence is inappropriate or that it caused a significant disturbance
- I am strongly compelled by the significant lack of evidence to establish that the Tenant's behaviour or the behaviour of his guests is disturbing any occupant, other than the occupant of unit#201, who indicated the use of illicit drugs makes it difficult for him to avoid using drugs.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the *Act*, I hereby set aside the One Month Notice to End Tenancy, dated March 13, 2009, and I order that this tenancy continue until it is ended in accordance with the *Act*.

In reaching this conclusion, I feel compelled to caution the Tenant that the Landlord may be successful in ending this tenancy in the future if the Landlord is able to submit specific details regarding future disturbances caused by the Tenant or his guests.

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: May 13, 2009.

Dispute Resolution Officer