



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated September 25, 2009. At the beginning of the hearing the Tenant's advocate claimed that she had not served the Landlord with her evidence package which contained a number of witness statements.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on or about December 1, 2005. On September 25, 2009 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause. The grounds alleged on the Notice are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

The Landlord claimed that on June 29, 2009 she received an anonymous complaint that the tenants in units 301, 303 and 306 were letting drug addicts and dealers into the rental property. As a result, the Landlord said she asked her staff to observe the traffic going and coming from those units. On July 16, 2009 the Landlord said she had a meeting with her staff who confirmed that there was a lot of traffic coming and going from the Tenant's unit. As a result, the Landlord served the Tenant a letter dated July 16, 2009 cautioning her about allowing people onto the rental property unsupervised.

The Landlord said that things were "quiet" until the end of August 2009 when she received complaints from other tenants about a number of questionable people coming and going from the Tenant's unit. The Landlord also said that on September 8, 2009, a staff member of the rental property advised her that he had seen a lot of traffic coming

and going from the Tenant's unit. The same day, the Landlord said another tenant advised her that he saw a well known drug dealer at the Tenant's unit. The following day, the Landlord's witness (who is the caretaker) advised her that he had also observed a lot of people he believed were drug addicts (based on their physical appearance, erratic mannerisms and speech) coming and going from the Tenant's rental unit. Consequently, on September 9, 2009, the Landlord gave the Tenant another letter warning her not to let "undesirable traffic" onto the rental property.

On September 16, 2009, the Landlord said the Tenant approached her and admitted that she had a drug problem and could not keep the other drug users away. The Landlord said she agreed that she would give the Tenant another chance if she tried to change. However, on September 24, 2009, the Landlord said her witness advised her that he followed 3 "unsavoury" men who had entered into the lobby and discovered that they were being led to the Tenant's apartment by the Tenant. The same day, the Landlord said the Tenant's sister approached her and told her that there was a problem because (as they spoke) the Tenant had 3 "druggies" in her apartment with her.

The Landlord said the following day she spoke to the janitor and caretaker who both confirmed that there was still a lot of traffic coming and going to the 3rd floor. The Landlord said she believed the Tenant had not kept her promise to change and as a result, she served her with the One Month Notice to End Tenancy on September 25, 2009.

The Tenant admitted that she had a drug problem and claimed that she attended treatment program on September 28, 2009 but was planning on attending a detox program soon. The Tenant argued that she was entitled to have guests and that what she did in the privacy of her own home was no one else's business. The Tenant denied that any of her guests caused problems on the rental property but admitted that she did not escort them to and from the rental property every time.

The Tenant argued that the "undesirable traffic" or drug users and dealers were let in by other tenants, specifically two other tenants who also resided on the 3rd floor of the rental property. The Tenant also argued that the two complaints made to the Landlord on September 28, 2009 were from the other tenants who were alleged to be involved in drugs. In any event, the Tenant said that the Landlord's witness had documented only 3 occasions when he had seen suspicious guests go to the Tenant's rental unit (although the Landlord's witness claimed that there were other occasions which were documented but not submitted as evidence at the hearing).

The Landlord's witness admitted that on some occasions, the suspicious people gaining access to the rental property went to other units on the 3rd floor and also admitted that he had not witnessed any drug use by the Tenant's guests in the common areas. The

Landlord's witness claimed, however, that he had followed suspicious people leaving the Tenant's unit and observed them wandering around other floors before leaving the rental property.

Analysis

The Landlord argued that the witness statements relied on by the Tenant should not be admitted because she could not verify the information in them or respond to them. RTB Rule of Procedure 11.5(b) states that a Dispute Resolution Officer may refuse to accept evidence not provided to the other party in advance of the dispute resolution hearing if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

The Tenant's advocate claimed that she tried to fax the evidence to the Landlord on November 13 and again on November 16, 2009 but was unable to do so. I find that the Tenant has offered no acceptable reason why she did not serve the Landlord her evidence by another method within the time limits required under the Rules when she had 6 weeks to do so. I also find that it would be a breach of the principles of natural justice to admit the witness statements when the Landlord has had no opportunity to verify their authenticity, challenge their reliability or otherwise respond to them. Consequently, I find that the Tenant's witness statements are not admissible as evidence at the hearing of this matter.

I find on a balance of probabilities that the Tenant has allowed persons who are drug users and at least one drug dealer onto the rental property for the purpose of attending her rental unit. I also find, based on the Tenant's admission, that she did not supervise the activities of those persons at all times, especially when they were leaving her rental unit. I find that there is no evidence that any of the Tenant's guests caused damage to the rental property or significantly interfered with or unreasonably disturbed other occupants of the rental property.

I do find, however, the Tenant has seriously jeopardized a lawful right or interest of the Landlord in allowing drug users and a dealer onto the rental property without supervising their activities on the rental property at all times after receiving 2 written warnings by the Landlord not to do so. In particular, I find that the Landlord has a duty to ensure the safety of all occupants of the rental property (in part) by ensuring that unauthorized or potentially dangerous persons are not allowed to roam around the property unsupervised. I find that the Landlord clearly expressed her concerns about this to the Tenant when she advised her that as most of the residents are senior citizens, she considers them "vulnerable" to those who might try to break into their units. I also find that until the Tenant obtains successful treatment for her addiction(s), she will



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

likely continue to invite drug users and dealers onto the rental property thereby undermining the Landlord's attempts to safeguard her other tenants.

Although the Tenant argued that there are other tenants on the 3rd floor of the rental property that are also involved in drugs, that is a separate issue for which the Landlord will have to take separate measures.

Conclusion

The Tenant's application is dismissed and the One Month Notice to End Tenancy for Cause dated September 25, 2009 will remain in force and effect. 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 17, 2009.

Dispute Resolution Officer