



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, OPC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated August 23, 2009, purporting to be effective September 30, 2009.

This hearing also dealt with a cross application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated August 23, 2009, and effective September 30, 2009. The landlord was requesting reimbursement for the \$50.00 cost of filing the application.

Issue(s) to be Decided

The issue to be determined on the tenant's application based on the testimony and the evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether the notice should be cancelled as requested by the Tenant.

The issue to be determined on the landlord's application, based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause This requires a determination of whether the landlord succeeds in proving that the tenant or a person permitted on the residential property by the tenant:

- Has significantly interfered with or unreasonably disturbed another occupant or the landlord
- has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- has put the landlord's property at significant risk; or
- has engaged in illegal activity that adversely affected the quiet enjoyment , security, safety or physical well-being of another occupant or the landlord.

The burden of proof is on the landlord to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act.

Background and Evidence Notice to End Tenancy

The landlord testified that the tenancy had originally started in 2007 and the current rent is \$620.00. The tenant had paid a \$350.00 security deposit. The landlord testified that the tenant has significantly interfered with or unreasonably disturbed a number of other residents on many occasions. The landlord had submitted into evidence copies of handwritten letters of complaint from other residents in the building. A number of these complaints indicated that the tenant had approached the occupants of different suites knocking on their doors in an intoxicated state to ask for cigarettes or other items and persisted in doing so despite being told not to return. More than one complaint letter submitted into evidence described separate incidents in which the tenant was found to be laying unconscious in common areas. The letter from one resident indicated that on Mother's Day at 5:00 a.m. the tenant was discovered lying at the entrance door and an ambulance had to be called.

Two other letters observed that the tenant was found passed out in a state of partial undress in the hallway. One complaint letter signed by a neighbouring resident alleged that the tenant had brought a dangerous individual into the building who the tenant knew was not allowed to return there and that this person was subsequently arrested and taken away by the sheriff. The complainant also alleged that the tenant was seen

engaging in drug transactions in front of the complex and ended the letter by stating that the resident was prepared to give notice to vacate if this tenant was not evicted.

The landlord testified that the tenant had been made aware of the many complaints and has persistently ignored written warnings. The landlord submitted into evidence copies of Notice of Complaint reports containing the caution, *"this written notice is a warning."*

A notice of complaint" letter dated May 15, 2007, reported that the tenant had engaged in *"loud and vulgar/abusive language, Harassment and/or annoying other residents"* and informed the tenant that, *"As you are aware of my verbal warning the night of May 14/07, there was another complaint about the same, also you went to the residence door of another tenant, intoxicated pounding on there (SIC) door asking if they made the complaint which is totally in their rights to do so but not for you to knock on their doors"*

Another notice of complaint report discussed details of an incident that occurred on March 3, 2009 and contained the following, *"Loud vulgar language at 11:48 p.m. This is a written warning. We have had many verbal complaints regarding this activity. RCMP was called on February 28th/09. This activity is disturbing to surrounding tenants."* The landlord testified that this written warning was given to the tenant. The landlord also provided a police file number.

A third notice of complaint, dated May 11, 2009, advised the tenant that 2 complaints were received, one on February 20 where the tenant was found *"drunk and exposed"* and required help to get into her suite and another complaint relating to the tenant being passed out in the front entrance where another tenant had to wait *"until the police came to assist"*.

The landlord testified that each of these notices had been given to the tenant in person.

The landlord also testified that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord by allowing an individual access, who was banned from the premises, despite being told verbally by the landlord that this was not permitted. Evidently this former tenant was seen as dangerous by some other residents and the landlord.

The tenant testified that all of the allegations against her were false and had absolutely no merit. The tenant testified that, while she did go to one other resident's door for a valid purpose, she was not intoxicated and was not told to cease. The tenant stated that she had never lost consciousness in the common areas and would not run around undressed. The tenant took issue with the accusation that she was taken by police or ambulance and submitted a letter from the Health Authority stating that there was no record of the tenant having been in the health facility on May 10, 2009, the day that , according to one complaint, an ambulance was allegedly called. The tenant provided a copy of another letter from an individual who had accompanied the tenant to the police station on September 28, 2009 and witness the fact that it was confirmed by an officer that there was no record of the tenant being arrested or attendance to the tenant's home by police. The tenant provided the name and phone number of the officer that handled the inquiry.

The tenant submitted into evidence eight letters from individuals who have known the tenant for a long period of time each praising the tenant and attesting to the tenant's good character. Most stated that the allegations against the tenant were not believable as they were not consistent with the tenant's normal conduct. One letter, from the tenant's daughter indicated that on May 10, 2009, the date of the purported incident in which the tenant was allegedly found in an unconscious intoxicated state outside the front door at 5:00 a.m., the tenant had been away accompanying her daughters and granddaughter at 1:00 p.m. and the tenant was not intoxicated.

The tenant testified that she did not even know the people complaining about her and felt that the landlord had influenced them to lodge these complaints. The tenant testified that at no time in the past was she was never given the Complaint Notices in evidence.

In regards to the allegation that the tenant permitted access to the building to a person who was banned from the premises, the tenant testified that she had only let him use her telephone. The tenant testified that she was not aware that this former tenant had been prohibited from entering the building. The tenant testified that this individual had also been visiting other renters in the building, who likely gave him access at times.

The tenant's position was that the One-Month Notice to End Tenancy for Cause should be cancelled. The tenant disputed much of the landlord's evidence and testimony.

Analysis of Issue - Notice to End Tenancy

A One-Month Notice to end Tenancy for Cause is issued under section 47 of the Act.

In regards to satisfying section 47(1)(d)(ii) which provides that the tenancy can be ended because the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, I find that, even if it was determined that all of the landlord's evidence and testimony was true, the facts given still would not suffice to meet the threshold to end the tenancy under this section. The incident cited by the landlord to support this apparently involved the tenant permitting a guest that the landlord and others found to be unwelcomed. The tenant freely admitted that she had allowed this person access. However, insufficient proof was provided that the presence of this particular individual put the health or safety of people at risk and that he was officially prohibited from being on the premises. I was not proven that the tenant was adequately informed that this individual had been banned by the landlord.

In regards to the allegation that the tenant had engaged in an illegal activity that adversely affected the quiet enjoyment, security, safety or physical well being of another occupant I find that the landlord's case would not stand, even if all the allegations were accepted. No illegal actions were proven to have occurred.

On the matter of whether or not the tenant had significantly interfered with, or unreasonably disturbed another occupant or the landlord, however, I find that there was substantial evidence put forth by the applicant landlord. I find that some of the events as described by the landlord, if true, would meet the criteria under section 47(1) (d)(i) and that this would be sufficient cause to end the tenancy.

I find that the landlord has provided credible evidence including copies of written complaints over a substantial duration of time from a number of different residents.

While I do accept that the tenant was never arrested nor removed at any time by police or ambulance, I do not accept the tenant's testimony that every single one of the

complaints were outright lies engineered by the landlord. In fact, most of the documents placed in evidence were hand-written and signed by the writer with addresses and telephone numbers provided. One of the complainants had even put the landlord on notice that she was prepared to end her own tenancy if no action was taken.

In regards to the tenant's statement that the landlord and others had concocted false accusations for the purpose of persecuting and harassing her for reasons unknown, I find that this position is inconsistent with the tenant's other testimony that nobody had ever told her about any complaints nor warned her that the objectionable conduct would jeopardize the tenancy.

I also find that the tenant's testimony that she had never seen nor been given any of the three separate complaint notices cautioning the tenant, was difficult to believe. The reports are on a form used by the landlord specifically to warn tenants about transgressions and they also contain dates and details of the violations.

In regards to the tenant's defending evidence that consisted of letters of support and testimony about the tenant's good character and the charitable work she is involved in, I am able to accept that the tenant may well be a person of admirable and impeccable character. However, this does not preclude a finding that the tenant has engaged in repeated incidents violating the Act and the tenancy agreement and significantly interfered with, or unreasonably disturbed other residents.

I find that, although there may have been no intent on the part of the tenant to do this, it is clear that others genuinely feel that they have been subjected to significant interference and unreasonable disturbance caused by the tenant. These residents are entitled under the Act to the peaceful enjoyment of their suites and common areas, free from interference and disturbance and the landlord is obligated under the Act to take whatever steps are necessary to ensure that this right is protected.

Based on the testimony and evidence presented, I find that the One-Month Notice issued by the landlord dated August 23, 2009 is justified under the Act. Accordingly I find that it should not be cancelled and should remain in force.

Conclusion

Based on evidence and testimony I hereby issue an Order of Possession in favour of the landlord, effective seven days after service. The order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that this amount may be retained from the tenant's security deposit of \$300.00 plus interest.

The tenant's application is dismissed in its entirety without leave to reapply.

December 2009

Date of Decision

Dispute Resolution Officer