

Dispute Codes:

CNR and MT

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 and to allow the Tenant more time to make her application to cancel the Notice to End Tenancy. At the hearing the Tenant withdrew her application for more time to make application to cancel the Notice to End Tenancy, after it was determined that she submitted her application within the legislated time period.

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 oral evidence, to cross-examine the other party, 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 Landlord and the Tenant agree the Tenant has lived in the rental unit for many years. The parties agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant indicating that the Tenant was required to vacate the rental unit on January 31, 2009. The Tenant submitted her application to dispute the Notice to End Tenancy on January 06, 2009, which is six days after she received the Notice.

The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and that has engaged in illegal activity that the Tenant or a person permitted on the property by the Tenant has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

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

- Another occupant of the residential complex advised the Landlord that they observed a male breaking into the coin operated laundry machines in the complex on, or about, December 27, 2008
- The occupant who observed the incident advised the Landlord that the person responsible for the theft was the ex-boyfriend of the Tenant, whose name was not known to this occupant
- The door to the laundry room had been forced open by unknown persons, who they believe to be the ex-boyfriend of the Tenant
- They have been experiencing thefts from the laundry machines for some time and they believe that the ex-boyfriend is responsible for all of the thefts
- The ex-boyfriend has not lived in the complex since these Agents for the Landlord became the managers approximately two years ago
- The female Agent for the Landlord stated that she asked the Tenant for the name of her ex-boyfriend, which the Tenant refused to provide. The female Agent for the Landlord stated that the Tenant became angry during this conversation and threatened to retaliate against the person who provided the information regarding the theft
- The Tenant refused to provide the name of her ex-boyfriend when she was later asked by the male Agent for the Landlord
- The Tenant refused to answer the door when the RCMP attempted to investigate the incident
- The threat to retaliate against the person who provided the information regarding the theft was inappropriate and has caused other occupants to be afraid of the Tenant
- Several drug addicted persons regularly visit the Tenant at her rental unit, which causes the female Agent for the Landlord to believe that the Tenant is selling illegal drugs.

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

- She has not dated the male in question for over fourteen years
- The ex-boyfriend previously resided in the residential complex, but not in the same rental unit as the Tenant
- The ex-boyfriend has many friends residing in the residential complex
- The ex-boyfriend does sometime visit her when he is at the residential complex, but not on a regular basis
- She did not wish to provide the name of the ex-boyfriend to the Landlord, as she did not know if the ex-boyfriend was responsible for the thefts and she simply did not want to get involved

- She was not at home when the police attended at her home to investigate the incident
- She did threaten to retaliate against the occupant who reported the theft, but only because she was angry at the Agent for the Landlord for insisting that she provide the name of her ex-boyfriend
- She did not intend to act on her threat nor has she taken any action against the occupant who reported the theft.

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 or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. In reaching this conclusion I considered the following factors:

- The Landlord submitted insufficient evidence to establish that the male who is suspected of breaking into the laundry machines was a guest of the Tenant at the time the thefts occurred, therefore the Tenant is not responsible for the actions of the male
- The Tenant's refusal to provide the name of a male she previously dated is not grounds to conclude that this Tenant has significantly interfered or unreasonably disturbed another occupant or the Landlord, as she has no legal responsibility to provide the Landlord with that information. This is particularly true because the subject male is a former Tenant of the residential complex and the Landlord has other means of determining his identity
- The Landlord submitted no evidence to establish that the Tenant acted on her threat to retaliate against the occupant who reported the theft, or that any other occupant had been disturbed by the threat
- The Tenant indicated that she has not acted on her threat, nor did she intend to act upon it at the time she made the comment
- The Landlord submitted no evidence to establish that persons visiting the Tenant significantly interfere or unreasonably disturb other occupants or the Landlord. In reaching this conclusion, I was strongly influenced by the fact that the concerns expressed regarding these guests relate to the female Agent for the Landlord's belief that they are drug addicted, which is irrelevant, and is not associated to specific disturbing behaviours exhibited by these guests.

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 or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord. In reaching this conclusion I considered the following factors:

- The Landlord submitted insufficient evidence to establish that the Tenant is engaged in the sale of illegal drugs. In reaching this conclusion I was strongly influenced by the fact that the female Agent for the Landlord suspects the Tenant is selling drugs simply because some of her guests are drug addicted, which I find to be an unreasonable conclusion
- There is no evidence that the Tenant or her guest is involved with the thefts from the laundry machines
- There is no evidence to establish that the Tenant or her guest is engaged in any other illegal activity.

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(2)(d)(i) or 47(2)(e)(ii) of the Act, I hereby set aside the One Month Notice to End Tenancy, and I order that this tenancy continue until it is ended in accordance with the *Act*.