Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated June 20, 2010 and also purporting to be effective July 20, 2010 and a cross application by the landlord seeking an Order of Possession for Cause based on the Notice.

Both the landlord and the tenant, appeared and gave testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause is supported under the Act or whether it should be cancelled. Has the conduct of the tenant or person permitted on the premises by the tenant unreasonably disturbed others and seriously impaired the lawful right or interests of the landlord or others.

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

Preliminary Issue

The One-Month Notice issued by the landlord was on an outdated "Notice to End A Residential Tenancy" form and the landlord had completed the applicable portion that pertained to issuing a One-Month Notice for Cause. However, this form refers to "sections 34 and 36 of the Act" which no longer relate to the matter under dispute, that

is terminating the tenancy for cause. Section 52(e) of the Act requires that when a Notice to end tenancy form has been issued by a landlord it must be "*in the approved form*". In this instance, however, I find that, despite referring to sections predating the current Act, the landlord's form otherwise contained relatively the same content as the current One-Month Notice to End Tenancy for Cause form now being used. Accordingly, I find that the tenant was not prejudiced by the landlord's use of this defunct Notice form and therefore the landlord's Notice will not be rejected based on the fact that it was issued an older format. However, the landlord is encouraged to obtain an up-to-date form from the Residential Tenancy Branch or the website for use in future.

Background and Evidence

Submitted into evidence was a copy of the tenancy agreement, a copy of the One-Month Notice to End Tenancy for Cause dated June 20, 2010, written testimony from the landlord, written testimony from the tenant and copies of written complaints from other residents. The landlord testified that the tenancy began on April 1, 2010 with rent set at $580 and a security deposit of $290.00 was paid. .

The One-Month Notice, alleged that the tenant or person permitted on the premises by the tenant, had unreasonably disturbed others and seriously impaired the lawful rights or interests of the landlord or others. The detailed information shown was that the tenant was "*Allowing drug addict/prostitute into suite, smell of illegal drugs coming from suite. RCMP investigating the whereabouts of a known criminal in above mentioned suite*"

The landlord testified that since the tenant moved in there have been complaints about the tenant and his associates including known criminals, drug users, prostitutes and persons of bad character. The landlord testified that the complaints included the following: frequent visitors who only remain for a short duration; individuals who prevented the entry door from latching and locking; chemical odors and smoke emanating from the tenant's suite; the tenant allowing undesirables banned from the premises to enter the building; and frequent police presence involving the tenant. A

document titled, "*Observation Notes*" submitted into evidence by the landlord chronicled the tenant's activities and contained detailed descriptions of his visitors. The writer also expressed concern about the tenant's demeanor and his failure to greet or converse with other residents in the hallway or elevator and commented that he appeared to be "in his own world". A dated chronology spanning from June 6, 2010 to June 25, 2010 contained commentary about the tenant and conduct of alleged guests of the tenant.

The landlord testified that some of the other residents fear the tenant and have threatened to move out. The landlord testified that one elderly resident refused to ride in the elevator with the tenant. The landlord was not able to describe any specific behavior exhibited by this tenant that physically threatened these other residents.

An incident that the landlord was able to personally verify occurred on June 17, 2010. The landlord received a report that there was an individual named A.C. in the stairwell using intravenous drugs she investigated and confirmed this. The landlord was aware that, this individual had previously been let into the controlled entrance by the tenant in the past, at which time the tenant was warned not to do so again because AC was banned from the building. The landlord stated that although nobody actually witnessed the tenant letting AC into the complex on June 17, it was strongly suspected that the tenant was responsible based on his past actions. The landlord was also aware that police were searching for a wanted criminal purported to be in the building and the landlord believed this individual was a friend of the tenant's.

The landlord stated that the tenant's conduct was in violation of the tenancy agreement signed by the tenant and pointed to paragraph 3 of the tenancy "rules" which stated "*No tenant shall do, or permit to be done, in his or her suite or in any other part of the building anything which may or can be to the justifiable annoyance of the other tenants of the building, or keep any cat or dog or other animal in any part of the building."* The landlord also referred to paragraph 4 of the agreement which stated, "*No tenant shall use his or her suite or permit it to be used, for any purpose of an illegal or improper*

nature, or injurious to the reputation of the building, or permit persons of a character objected to by the landlord or agents of the building, to resort thereto."

The landlord's position was that, given the tenant's conduct and that of his visitors, the tenant was not in compliance with the above paragraphs in the agreement he signed.

The tenant testified that the landlord was unfairly trying to interfere with his right to entertain visitors of his choosing and felt that the landlord was trying to unreasonably restrict his guests. The tenant acknowledged that the landlord had telephoned him in May to warn him not to permit AC into the building and he stated that he had fully complied with this. The tenant stated that he did not open the controlled entry for AC on June 17, 2010 as is being alleged. The tenant stated that, to his knowledge, none of his guests had propped the entry door open to prevent it from locking and he would be very concerned about his own security and that of the building if this ever happened. The tenant denied that he had engaged in illegal activities of any kind. The tenant stated that the police had come to his door more than once, but pointed out that this was because the landlord had repeatedly called them with frivolous, unsubstantiated allegations about the tenant's alleged involvement in criminal activity and drug use. The tenant considered the landlord's actions in this regard to be harassment. The tenant testified that the so-called chemical/drug smells coming from his suite were investigated by police and it was found that the odour came from some moth balls that the tenant had been using to thwart a problem with flies entering his suite in the absence of screens. In regards to the accusation that other residents had reason to fear him, the tenant stated that this was not attributable to anything he had ever done or said but was more likely due to prejudice based on his rough appearance and tattoos. The tenant stated that he is truly a good tenant and has done absolutely nothing to warrant being wrongfully labeled as objectionable or dangerous. Moreover, according to the tenant, his guests have not misbehaved nor bothered anyone either.

The tenant's witness testified that he was one of the apparently unsavory characters referred to in the "*Observation Notes*" submitted into evidence by the landlord which

described him as "*An older man in a grey pick-up arrives about once a week and takes the tenant out. He has white hair and is average build: about 65-70 yrs old.*" The witness stated that he is the tenant's father and often picks up his son to join him for their weekly breakfast together. The witness felt that there was no justification for the landlord or other residents to be spying on the tenant nor monitoring and recording details about his daily life and the activities of his company. The witness was disgusted by the landlord's intrusion especially her efforts to use the data to support terminating the tenancy without valid justification.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that under the Act, a landlord is expected to take reasonable measures to ensure that the quiet enjoyment of each resident in a complex is not violated by another tenant.

In case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant would have to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises because of the tenant's actions. I find that the term "unreasonable disturbance" is a subjective determination that may widely vary from one individual to another. However, when a resident is exercising the freedom to quiet enjoyment within their own suite of in the common areas, engaged in

pursuits that do not violate their tenancy agreement, it naturally follows that their actions could not be considered to constitute an “unreasonable disturbance”.

I accept the landlord’s testimony about incidents described that would constitute cause, such as using drugs in the common areas, propping open the door and manufacturing drugs in the suite. However, the landlord is required to prove that these things were being perpetrated by the tenant or his guests. In this instance, other residents and the landlord appear to be basing some of the complaints on presumptions and supposition in regards to incidents that were never proven to have any connection to the tenant .

I find that it is clear the landlord and others are genuinely bothered by the tenant and his pursuits, including the guests he welcomes into his home. However, the fact that other residents are entitled to have an opinion and may be nervous about or disapprove of the appearance, demeanour or manners of the tenant and his visitors, this does not constitute a reason to restrict the tenant’s rights, nor will such circumstances furnish the landlord with a valid enforceable reason under the Act to terminate the tenancy for cause based on such complaints.

In fact, under section 30 (1) of the Act, a landlord is not permitted to unreasonably restrict access to residential property by (a) the tenant of a rental unit that is part of the residential property, or (b) a person invited to be on the property by that tenant.

In regards to the term in the tenancy agreement that appears to impose a more rigid code of conduct than that in the Act, I find that section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and that any attempt to avoid or contract out of the Act or the regulations is of no effect. Section 6(3)(a) of the Act states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations. Accordingly I find that portion of term in the tenancy agreement that purports to give the landlord authority to determine the character of the tenant’s guests or restrict them based on perceived character clearly contravenes sections 30(1) and section 28 of the Act and cannot be enforced.

A landlord is entitled to hold the tenant accountable if proven guilty of significantly interfering with or unreasonably disturbing others, or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. However, this does not extend to allow the landlord to restrict the tenant's activities or guests based on perceptions about their character, reputation, appearance, lifestyle choices or any unsubstantiated presumptions and fears personally held by others. Generally speaking each tenant is at liberty to entertain whom he or she wishes and to engage in whatever activity preferred within the suite or common areas, unless that activity impedes the quiet enjoyment of other occupants.

While I find that there were incidents that could jeopardize this tenancy if it was proven to be the fault of the tenant, such as permitting a guest who openly used drugs in the common areas, the landlord has not sufficiently connected the incidents to this tenant.

Given the evidence and testimony, I find that the Landlord has not succeeded in establishing that the One-Month Notice to End Tenancy for Cause is supported under the Act. Accordingly, I grant the tenant's application to have the Notice cancelled.

During the proceedings, the parties reached an agreement that the landlord would supply screens to the tenant's unit in order to prevent the flies from entering the suite.

Conclusion

Based on evidence and testimony above, I order that the One-Month Notice to End Tenancy for Cause dated January 20, 2010 is hereby cancelled and of no force or effect. The landlord's application is dismissed in its entirety without leave to reapply.

The tenant is entitled to be reimbursed the $50.00 cost of the application and can withhold this amount from rent owed as a one-time abatement.

August 2010 _____

Date of Decision Dispute Resolution Officer