



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel a 1 Month Notice issued ending tenancy for cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the 1 Month Notice ending tenancy issued for cause on May 26, 2011, be cancelled?

Background and Evidence

This tenancy commenced on September 1, 2009, rent in the sum of \$515.00 is due on the first day of each month.

The parties agreed that the written tenancy agreement includes a term that requires tenants and their guests to be quiet from 10 p.m. to 8 a.m. each day; a copy of the agreement was not provided as evidence. The tenant resides in a 59 unit building.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2011. The reasons stated for the Notice to End Tenancy were that the tenant or her guests have 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 of written notice.

The landlord provided copies of 2 written warnings given to the tenant; one dated April 5, 2010 and a second issued on January 13, 2011. Both warnings were in relation to the tenant's guests who repeatedly arrive at the building during the hours when

occupants should not be disturbed. Sometimes the guests arrive at 3 or 4 a.m.; they stand outside the building and yell for the tenant to come to the door to let them into her unit. The January 13, 2011, warning indicated that a female had arrived at the unit at 10:30 p.m.; she was yelling for the tenant and rude to the landlord. These individuals do not sue the intercom system that is in place.

The Notice ending tenancy was issued on May 26, 2011, after a friend of the tenant's again caused a disturbance by yelling for the tenant at 6:30 a.m. The landlord approached this female and told her if she yelled one more time the landlord would have to evict the tenant; the female then yelled again.

The landlord provided a copy of a May 26, 2011, letter from an occupant of the building who confirmed that she has been awakened at all hours of the morning by one of the tenant's friends who screams outside of her window. The occupant stated this has occurred approximately 8 times and if it continues she will move out of the building.

The landlord has repeatedly talked to the tenant about this problem and when warned the problems abate and then slowly reemerge. The landlord stated he cannot stop the tenant from having guests and that her guests are causing the tenant to be evicted.

The tenant responded that she has been warned in the past and that on the night prior to the hearing she had her female friend remove any belongings from the unit and that she has banned her from coming to the property. Of the other 2 individuals who have caused problems by yelling up to the tenant; one is in custody and will not be welcomed by the tenant and the second person no longer causes problems and uses the apartment intercom.

The tenant testified that on the occasions when her female friend would come in the early hours of the morning and yell, she would go downstairs, tell her to stop and that she would not let her into the building. The tenant confirmed that if the female who is causing problems returned to the property she would call the police.

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 written warning given over 1 year ago and the nature of the disturbances caused by individuals who come to the building in an attempt to enter the tenant's unit.

Section 30 of the Act provides:

30 (1) *A landlord must not 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 **permitted** on the residential property by that tenant.*

(Emphasis added)

The landlord and tenant both know the 1 individual who appears to have caused the majority of the disturbances, by coming to the rental building in the early hours and yelling for the tenant. There is no evidence before me that this visitor has been permitted by the tenant to come to her home at these hours and there is no evidence before me that when this individual comes to the building and causes a disturbance that she is allowed entry by the tenant.

The landlord issued the Notice as on May 26, 2011, at 6:30 a.m. the problem person failed to listen to the landlord's warning and chose to yell for the tenant again. It is not clear how the tenant could have controlled this person's behaviour or that this person was permitted to be on the property by the tenant.

I find, on the balance of probabilities, that the tenant did not have complete control over the late night disturbances; however, the tenant may have, to a degree, encouraged the behaviour by her failure to take a firm, consistence stand with her acquaintances.

The tenant had the ability to ban these individuals from contacting her and while she has just taken action, there was testimony that she would not allow them into her home when they arrived during the quiet hours and disturbed others.

There is no evidence before me, in the face of these late night disturbances, that the landlord called the police or took any action other than warning the tenant.

Based on the absence of evidence that the disturbance has been caused as the result of permission given by the tenant for entry by those causing a disturbance, I find that the Notice issued on May 26, 2011, is of no force or effect.

The tenant has now banned the problem individual from access to her home and told her not to return. I find that the tenant now clearly understands that any guest she permits on the property who disturbs others, no matter what time of day, could have a negative impact on her tenancy.

The landlord is also at liberty to intervene at any time someone enters the residential property and causes a disturbance, by directing them to leave and/or calling the police. Section 30 of the Act indicates the landlord must not unreasonably deny access and I find that late-night or early morning disturbances outside of the building are unreasonable and that the landlord is not blocked from denying access and/or calling authorities in those situations.

The tenant clearly understands that she must inform her acquaintances that she will not respond if they arrive at her building and fail to use the intercom system that is in place and, that they can expect to be escorted off the property by the authorities if they cause a disturbance.

If the landlord has evidence of the tenant allowing access to the building by individuals who arrive and cause a disturbance, the landlord is at liberty to issue another 1 Month Notice ending tenancy for cause.

Conclusion

As I have determined that the landlord's have 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 1 Month Notice to End Tenancy, dated May 26, 2011, and I order that this tenancy continue until it is ended in accordance with the Act.

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: June 24, 2011.

Residential Tenancy Branch