



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC

For the landlord – OPC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks to cancel the One Month Notice to End Tenancy. The landlord seeks an Order of Possession and to recover the filing fee.

I am satisfied that both parties served the other party in person with a copy of the Application and Notice of Hearing pursuant to s. 89 of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?
- If not is the landlord entitled to an Order of Possession based on the reasons given on the One Month Notice to End Tenancy?

Background and Evidence

Both Parties agree that this month to month tenancy started on April 01, 2010. The tenant pays a monthly rent of \$375.00 on the first of each month in advance. This unit is in a complex where one side is set aside for social housing and the other side is set aside for clients who require a program for mental illness or substance abuse.

The landlord testifies that when tenants are given occupancy they are informed, due to the nature of the program in place on the other side of the complex, that they must not fraternize with these clients. This is explained verbally to the tenants when they sign the crime free addendum to their tenancy agreement.

The landlord testifies the tenant was served with a One Month Notice to End Tenancy on May 25, 2011. This was served to the tenant in person and gave the following six reasons to end the tenancy.

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) damaged the landlords property

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The landlord testifies that this notice was served because the tenant has been involving herself with the clients from the other side of the complex. The landlord states he has been told some clients visit this tenants unit to buy or use illicit drugs. The landlord states these clients were asked by their case workers why they were at this tenants unit and states they told their caseworkers they went there to buy drugs.

The landlord states since this tenant has had occupancy she has consistently not adhered to the landlords' expectation of no interaction with the clients on the other side of the complex. The landlord states he has seen clients go to this tenants unit and has had to ask them to return to their own section of the complex. The landlord states when they have gone to the tenants unit she has become argumentative. The landlord states he has not personally seen the tenant give or sell drugs to the clients.

The landlord testifies that the tenant was also involved in an incident when one of the clients was seen by the complexes security guard moving one of the security cameras. He states the security guard also informed the landlord that the tenant was milling around the area and overheard the tenant tell the client where to position the camera. He states the tenant and client were told not to tamper with the cameras. The landlord testifies that he went to the tenants unit and spoke to her about this incident and was told by the tenant that she had asked the client to position the camera onto her unit. The landlord states the client who was moving the camera is the person appearing at the hearing today as the tenants' witness. The landlord also states the tenant has been storing recyclable goods in a storage space near her unit. Part of these goods appears to be wire which the tenant has been observed stripping.

The landlord calls his witness who is a client at the complex. This witness testifies that he has visited the tenant at her unit after being told by another resident that he could purchase illegal substances from this tenant. He states he visited her approximately nine times while he knew she was selling and on these occasions there were sometimes other people also at her unit. He states this tenant has also been to his unit on two occasions to use his oven. The witness states he thought the tenant was a nice person but she did once threaten him

when he owed her some money. The witness testifies that he purchased Pot and Crystal Meth from the tenant.

The tenants advocate cross examines the witness and asks how long he has lived at the complex, did he have a relationship with the tenants witness and did they live together in a unit, did management ask you to share your unit with the tenants' witness. The witness replies that he has lived in three different units within the complex. He states he did live with the tenants witness in his unit after management asked him to share and he states he was promised a bike if they moved in together. He states they shared a unit for about four months until the tenants witness became violent towards him.

The tenants advocate asks the witness if he still lives in the same unit, did the management ask him to share his unit again, how many conversation have you had with the landlord concerning this hearing and how many meetings has the witness had with the landlord concerning the hearing today. The witness replies that he still lives in the unit and has been offered a bike or a bus pass if he agrees to share his unit again. The witness also states he has had about three meetings with the landlord about the hearing today

The landlord testifies that the tenants contact with the clients from the other side of the complex has had a detrimental effect on these clients' recovery programs. Due to this and the damage to the landlords' property, selling illicit drugs to clients, and other illegal activities the landlord seeks that the One Month Notice to End Tenancy is upheld and that an Order of Possession be issued for the effective date of the Notice.

The tenants advocate states that the tenant has been a tenant for over a year and has not had any complaints in writing from the landlord just some verbal complaints. The advocate submits that the tenant has provided numerous letters of support from other tenants attesting to her being a good neighbour. The advocate submits that the landlord is acting unreasonable in trying to control who the tenant can be friends with particularly the tenants witness who is a client living on the other side of the complex, as she has had a friendship with this person as a family friend for many years.

The tenants advocate calls into question the reliability, credibility and validity of the landlords witnesses testimony as he has testified that he is a drug user and find it would be unlikely that he would incriminate himself if he was not being rewarded by the landlord. The tenants advocate also submits that as the landlord has no firsthand knowledge of any drug related incidents that she finds it strange this witness had to have three meetings with the landlord to discuss this hearing. The tenants advocate also submits that the landlord has provided no evidence or video footage of any illegal activities committed by the tenant.

The tenants advocate calls the tenants witness who is also a client of the landlords and lives on the other side of the complex. This witness testifies that he has lived at the complex for over two years but has known the tenant for 12 or 13 years. He states he does errands for her and she will cook meals for him. The witness testifies that he has never seen the tenant dealing in drugs and states she does help out other clients being a good neighbour. The witness states that he helps strip the plastic off the wire but this wire does not come from the landlords building.

The landlord cross examines this witness and asks him what he was doing to the security camera. The witness states he was trying to get the make and model from the camera. The landlord states that the tenant said you were trying to get a ball off the roof so which was it and the witness states both things. The landlord asks the witness if he placed the camera towards the tenants unit and the witness replies no he was told to get off the roof so that's what he did before he even touched the camera. The landlord asks the witness if he participates in stripping wire outside the tenants unit. The witness replies he has and he has also done it outside his own unit until the landlord told him not to. The tenant states he does receive cigarettes and food from the tenant. The landlord asks the witness if he has been told not to go to the tenants unit and how many times he has been told. The witness replies that the landlord wants him to end his friendship with the tenant and he has only been told twice not to go to her unit.

The tenant testifies that on May 19, 2011 a member of the landlords' staff came to her door and told her the landlord was evicting her but he did not yet know the date. She states he told her when asked it was because she was dealing drugs and the landlord had it all on

camera showing lots of people coming out of her unit that morning. She states this member of staff also told her she could no longer see CC (her witness) or cook dinners for him. The tenants advocate asks the tenant if she signed an addendum to her tenancy agreement agreeing not to talk to the clients in the complex or did she have a verbal agreement to this effect with the landlord. The tenant states no she neither signed anything or agreed verbally to not talk to the clients. The tenant states she did sign the crime free addendum and has been clean and off drugs for four years. The tenant disputes the landlords' claims that she has been in possession of or provided drugs to any person in the complex.

The landlord testifies that the bikes his witness stated he was offered were bikes that had been donated to the complex and each of the clients were being given a bike but not as a reward for anything. The landlords' agent recalls the landlords witness and asks him if he has been rewarded in any way for giving testimony at the hearing. The witness states absolutely not. The landlords' agent states that the tenants witness stated he was doped up on medication and his evidence was therefore not credible.

To summarise the landlord states they go to great lengths not to evict a tenant but it is intolerable to have someone on site selling drugs as they have a responsibility to all tenants and clients alike. The landlord seeks to have the Notice upheld and for an Order for Possession to be issued for the effective date of the Notice.

The tenants advocate summaries and states the tenant has never interfered with or disturbed any other tenants or the landlord; she has never put the landlords' property at risk and has not caused damage to the landlords' property. The tenant has not engaged in any illegal activity for any of the reason given on the Notice to End Tenancy. The tenants advocate states the tenant is a good tenant and neighbour and it is over reaching and unreasonable for the landlord to place restrictions on whom the tenant can talk to especially when it is a person whom the tenant has a pre-existing relationship with. The tenant seeks to have the Notice set aside and for the tenancy to continue.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has not provided any video footage of the tenant dealing drugs and has no firsthand knowledge of any incidents where the tenant has been seen to deal drugs from her unit. I further find the landlords' witnesses' testimony carries little weight as by his own admission he has been a recent drug user of an illegal substance and has had conflict with the tenants' witness. Therefore, I find his evidence to be less than credible.

I also find the landlord has provided no evidence other than hearsay that the tenant has damaged his property, disturbed or interfered with other tenants or the landlord or jeopardized the health, safety or lawful right of another occupant or the landlord. The landlord has provided no evidence to support his claim that the tenant has engaged in an illegal activity as stripping wire or collecting recyclable is not illegal and although the landlord states he has video footage of clients coming from the tenants unit he has failed to provide this in evidence.

Furthermore I find a landlord may not place restrictions on who a tenant can talk to or have as a guest in her unit whether this would be in writing or a verbal agreement as it would be an unconscionable term of a tenancy agreement and would overstep the rights and responsibilities of a landlord towards his tenants. Therefore in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The landlord application for an Order of Possession and to recover his filing fee based on the One Month Notice to End Tenancy dated May 25, 2011 is dismissed without leave to reapply.

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated May 25, 2011 is cancelled and the tenancy will continue.

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 20, 2011.

Residential Tenancy Branch