



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, O

For the landlord – OPL, 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 for cause and other issues. The landlord seeks an Order of Possession for cause and to recover their filing fee.

Both Parties served the other in person with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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 witness, 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 in the One Month Notice?

Background and Evidence

Both Parties agree that this month to month tenancy started on June 10, 2010. This is a single occupancy tenancy. Rent for this unit is \$525.00 and is due in advance on the first day of each month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on May 30, 2011 in person. This notice has an effective date of June 30, 2011 and gave the following reasons to end the tenancy:

- 1) 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
- 2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (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.

The landlord has also provided a log from June 25, 2010 to June 2011 detailing incidents the tenant has been involved in. These incidents include but are not limited to, ringing the landlord's bell late at night because she has forgotten her keys; warning letters sent concerning her disturbing other tenants by buzzing them or knocking on their windows late at night to be let into the building or asking other tenants for money or cigarettes; allowing another person to reside with her without the permission of the landlord and in contravention of her tenancy agreement; disturbing other tenants late at night with the yelling and screaming coming from her unit; allowing guests to enter her unit through her window; disturbing another tenant at 4.00am by banging on her door asking to borrow some medication; allowing a second guest to live in her unit without permission from the landlord;

disturbing another tenant by walking into his unit which scared his young children; and the tenants guest banging on the window of one of the tenants neighbours asking to be let in so he can access the tenants unit.

The landlord has provided letters he has received from other tenants concerning the disturbances caused by this tenant which confirm the landlords' incident log. The landlord has provided copies of warning letters sent to the tenant about her guests and her behaviour and states she has not corrected her behaviour and so was served with this eviction Notice. The landlord testifies that the tenants' unauthorised roommate residing with her now has a past history with the landlord as he was a tenant in the building approximately 10 years ago who was evicted and still owes rent and damages to the landlord. The landlord testifies this man is a known drug dealer and has threatened the landlord. He states this man is not allowed on the property and he has explained this to the tenant.

The landlord agrees there have been no complaints for the last three weeks since the tenant was served the eviction Notice however he still requests that the Notice is upheld and seeks an Order of Possession for June 30, 2011.

The tenant testifies that she has been causing some disturbances and agrees she has been "a bit of a pain" but states she is quiet now. The tenant states she has had to climb in her window as she has lost her keys again and states her roommate does not live there full time. He stays for three days, goes away for one day and then comes back for three days, therefore complying with the tenancy agreement. The tenant agrees she did have to ask the landlord to let her in a few times when she lost her keys. The tenant states she wants to move out but just needs more time.

The tenants' witness who is also the tenants' roommate gives evidence. He testifies that whenever he goes to visit the tenant the landlord asks him to leave. He states he has

committed no crimes but confirms he did have to enter the tenants unit through her window on one occasion as she had lost or forgotten her keys.

The landlord declines to cross exam this witness.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. 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.

Although the landlord claims the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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. I find that there is no evidence of an illegal act as alleged on the One Month Notice. However, I find that there is ample evidence that the tenant has significantly interfered with and unreasonably disturbed other occupants and the landlord of the rental property. In particular, I find on a balance of probabilities that the tenant has subjected other tenants to late night noise from her unit and knocking on other tenants doors or asking to be buzzed into the building both late at night and in the early hours of the morning. The tenant has admitted to having been "a bit of a pain" and the letters to the landlord complaining of the tenants activities also confirm the landlords' testimony.

The landlord and tenant do both agree that things have quietened down since the Notice was issued, however I find when the landlord did issue this Notice he did so with sufficient cause to end the tenancy. Consequently, I find that as there are grounds for issuing the One Month Notice to End Tenancy for Cause dated May 30, 2011 the tenant's application to

cancel it is dismissed. The Notice will remain in force and effect and the landlord is entitled to an Order of Possession for the effective date of the Notice.

I further find the tenant has allowed her friend to live with her in the unit without permission of the landlord and although this friend does leave every third day I would still consider this to be a living arrangement; Although the landlord has not used this as a reason to end the tenancy on the One Month Notice it has been noted in this decision as it was brought up in the hearing by both Parties.

Conclusion

The Tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective June 30, 2011. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord has been successful with his application, I find that he is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit \$262.50 leaving a balance \$212.50 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of 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 27, 2011.

Residential Tenancy Branch