

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47.

The Notice to End Tenancy for Cause (the “Notice”) lists the following causes:

1. The tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - Put the landlord’s property at significant risk.
2. Tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - Jeopardize a lawful right or interest of another occupant or the landlord.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice valid?

Background and Evidence

The tenancy began on October 1, 2004. The Tenant lives in housing for persons over the age of 45 years that is operated by a Society. The Landlord states that the Tenant has been issued the Notice for persistent and serious breaches of the tenancy

agreement and the Act. The Landlord submitted several pages of evidence in relation to the incidents complained of between the beginning of the tenancy and currently. Over this period, the Landlord submits that 17 letters were sent to the Tenant concerning the Tenant's behaviour and the behaviour of the Tenant's guests and an additional 14 letter in relation to the poor condition of the unit. It is noted that the matters complained of prior to April 19, 2005 were the subject of an application for dispute resolution pursuant to an earlier Notice to End Tenancy for Cause. The decision in this matter did not find the Notice to be valid. It is also noted that between January 2008 and December 2010, the Tenant was not subject to any complaints from the Society.

Between December 2010 and June 24, 2011, the Landlord states that the Tenant's guests caused problems on two occasions. On April 27, 2011, the Landlord states that a guest verbally abused another tenant who was inside the building, while the guest was outside the building and then left with the Tenant. A short time later, the guest returned to the building, without the Tenant, and became aggressive threatening a tenant with physical harm. On June 21, 2011, the Landlord states that an intoxicated person was found sleeping in the stairwell of the building. The Landlord states that this person informed the Landlord upon being awoken, that he was a guest of the Tenant. The Landlord states that two tenants complained about this incident and that the behaviour of this person caused a significant risk to the property and adversely affected the security and safety of other tenants by blocking the fire exit while sleeping in the stairwell. The Landlord states that the Tenant had received warning letters about his guests' behaviour several times in the past and as the Tenant lives in a seniors building, there are serious concerns that the guests are upsetting the other tenants.

The Tenant states that the incident complained of from April 2011 involved his guest yelling out "idiot" to another tenant who was inside the building and that the Tenant just walked his guest away from the building. The Tenant states that he was not in the company of this guest when the guest returned to the building and that he cannot be held responsible for this person's behaviour at that time. The Tenant states that while

he knew the person found asleep in the stairwell that this person was a transient person and not his guest at the time of the incident and that he had not invited or allowed this person into the building.

The Landlord states that the Tenant has failed to keep his unit in a good condition raising serious health and safety risks. The Landlord states that the building has had a problem with bedbugs over the years and that inspections are carried out every three months. The Landlord states that on June 21, 2011, a scheduled inspection was attempted at the Tenant's unit but that the inspection could not be carried out because the unit was too cluttered. The inspector issued a report to the Landlord recommending that the clutter be reduced by at least 50% and a follow-up inspection be performed as soon as possible thereafter. The Landlord did not provide photos of the unit from this time period but did provide photos from an inspection carried out in April 2007. The Landlord states that following a letter to the Tenant in relation to the condition of the unit for inspections, a follow-up inspection was carried out successfully on July 20, 2011 but that the condition of the unit was still problematic. The Landlord provided photos of the unit taken at this inspection and it is noted that the photos are only of one room containing tools and one photo of a bird's nest that had been found on a mattress set outside on the unit's deck. The Parties agree that the Tenant has not had any problems with bedbugs in his unit. The Landlord states however that units near the Tenant's unit has had problems.

The Tenant states that he has attempted to keep his unit in good condition but that in addition to having lost a leg a few years ago, he suffers from clinical depression and is a diabetic which makes the upkeep of his unit a "daunting challenge". The Tenant believes that the major problem is the tools and equipment kept in his unit that is used to make guitars. The Tenant states that as he can no longer maintain this work, he will be getting rid of the tools. Further the Tenant states that he requires help with the condition of his unit and as he now receives a pension, he will bring in a cleaner once a week.

The Landlord states that the Tenant has breached a material term of the agreement set out in an addendum to the tenancy agreement, entitled "Guidelines for Residency". The Landlord states that the behaviour of the Tenant's guests has resulted in the Tenants breach of these guidelines. The Tenant's advocate points out that the addendum referred to by the Landlord as being breached by the Tenant are in relation to behaviour of a tenant and not any guests and that the Landlord has not raised any concerns with the Tenant's behaviour himself in relation to those guidelines.

The Landlord further states that the Tenant's guests have been involved in illegal drug activity while at the unit or building. It is noted that the alleged illegal activity of the guests were noted in the evidentiary materials to have occurred prior to January 2008 and no complaints of this nature have arisen since then. The Landlord states that over the period of time from the start of the tenancy, the behaviour of the Tenant and his guests show a consistent pattern and little willingness on the part of the Tenant to change.

The Tenant submits in his evidentiary materials that following the first attempt by the Landlord to evict him, he began to disassociate with the persons who were causing problems and that in the past two years he no longer has troublesome associations.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Although the Landlord argues that the Tenant's behaviours over the years has been ongoing and shows a consistent and unchanging pattern, I find that the evidence of the Landlord in fact shows the opposite. It is clear that the number of complaints were primarily prior to 2008 and that for a period of 2 years there were no complaints at all. I find that the incidents complained of prior to

2010, due to the age of the complaints and the noted reduction of complaints, do not provide evidence of cause.

Further, I find that the two incidents complained of in relation to the Tenants guests were not significant. The primary complaint about the behaviour of the guest in April 2011 appears to centre on the incident where the Tenant was not present and the Tenant cannot be held responsible for someone that was not let into the building or onto the grounds by the Tenant. While it can be found on a balance of probabilities that the person sleeping in the stairwell was a guest of the Tenant, I do not find this one incident to be as serious as claimed. This person was not bothering anyone and while there may have been a possibility of danger in relation to the blocking of the stairwell, a possibility cannot be taken as a significant risk to the property, or can it sustain any of the other reasons stated in the cause.

While the photos of the Tenant's unit from 2007 show an unkempt unit, I cannot accept that these photos are reliable evidence as to the current state of the unit or the state of the unit at the time of the inspection on June 21, 2011. I accept the evidence of the inspector that the inspection could not be carried out on that date however it is clear that the follow-up inspection was able to be carried out. It is also curious that the Landlord did not take photos of the unit at the time of this last inspection except for the one room with tools. These photos do not support a claim that the unit's condition has seriously jeopardized the health or safety of anyone. Taking into account as well that the Tenant's unit has not been identified as a unit with bedbugs, I find that the Landlord has not substantiated that the condition of the unit is valid cause for ending the tenancy.

Given the fact that the illegal activities complained of occurred in 2008, considering that the complaints described in the warning letters are only allegations and only in relation to the Tenant's guests, and accepting the Tenant's evidence that he no longer associates with persons from this time period, I cannot find that the Landlord has substantiated cause with this evidence.

Although the Landlord states that the Tenant has breached a material term of the tenancy agreement, I note that those sections of the addendum pointed to by the Landlord are in relation only to the actions and behaviour of the tenants and not of their guests. Since the Landlord has not complained about the behaviour or acts of the Tenant in this regard, I find that the Landlord has not substantiated a breach of a material term of the tenancy agreement.

As I have found that the evidence of the Landlord does not support cause for the Notice, I find the notice to be invalid. I find therefore that the Tenant is entitled to a cancellation of the Notice.

Conclusion

The Notice is cancelled and of no effect. The tenancy continues.

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: September 29, 2011.

Residential Tenancy Branch