



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a Notice to end tenancy for cause (the Notice).

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of evidence provided by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has a valid Notice to End Tenancy been issued and served upon the Tenant in accordance with sections 47, 52, and 88 of the *Residential Tenancy Act*?
2. If so, has the Tenant met the burden of proof required to have the Notice cancelled pursuant to section 47 of the *Residential Tenancy Act*?
3. If not, has the Landlord attended the hearing and requested an Order of Possession?

Background and Evidence

The parties agreed they entered into a month to month tenancy agreement that began on July 1, 2009. Rent is payable on the first of each month in the amount of \$450.00 and on or before July 1, 2009 the Tenant paid \$220.00 as the security deposit.

DS affirmed that from time to time the Tenant brings in guests who cause a security risk to other tenants. He advised the Landlord has a strict policy that all guests must be escorted in and out of the building and when they are in the common areas such as the hallways. However, this Tenant has a history of letting his guests roam free in the hallways, even during the late evening when they bang on other tenant's doors. DS advised that given the location of this building they have to keep to a strict policy for the safety of all of their tenants.

DS stated that they have spoken directly to this guest, who the Tenant allows in the building and to the Tenant on many occasions, to request that the guest stay in the Tenant's room while visiting; however the guest continues to roam around unescorted.

DS advised that on November 19, 2011 the Tenant told one of the evening desk clerks that his guest broke into his room and caused damage to his door. DS confirmed this is the same guest which they do not want roaming around unescorted in the building for safety reasons. The Landlord confirmed that this door has not yet been repaired because he suspects that once it is repaired the Tenant's guest will just kick it in again.

DS referred to their evidence for copies of the written breach of tenancy letters served to the Tenant and added that he has personally gave the Tenant numerous verbal warnings but the Tenant does not listen. In addition to allowing this unwanted guest in the building unescorted, DS stated the Tenant has gotten into numerous fights in his room with his guests, which disturbs other tenants who complain, and the Tenant has his music too loud which is also disturbs the other tenants. DS stated these are also referenced in his evidence.

The Advocate questioned the Landlords how they knew it was the Tenant's guest who cause this damaged. DS stated the Tenant himself reported the damaged, stated it was done by his guest, and requested that it be repaired. DS noted that the same night they received several complaints from tenants about a fight in the Tenant's room.

The Tenant stated that he does not know who broke his door and advised it could have been anybody. He confirmed he noticed his door was lose a day later and when he reported it he was told there were reports of an argument in his apartment not that there was a party going on.

The Tenant said he is aware that his visitor used to be a former tenant and that he was not aware that he was considered violent or aware of any complaints about him being violent.

The Tenant confirmed that since the new owners took over he has had the staff come and tell him he is making too much noise but this is as early as 6:00 p.m. and up to about 9:15 p.m. He acknowledges that he has recording studio quality D.J. equipment and since turning down the bass he has not had any other complaints. He states there are two night clubs in this building that operate music until almost 4:00 a.m. so he said that could be the source of the noise.

BD affirmed that he has been employed at this building with both the previous and current owners and he has personally warned the Tenant on several occasions that the bass is too strong on his stereo. He advised the bass is so strong that it knocks pictures off the wall in other rooms. He stated that it is almost a day to day issue with this Tenant and he allows this unwanted guest into the building, unescorted, on more days than not. He stated the Tenant is misrepresenting the degree of noise he is causing.

DS stated that if we look at the Landlord's documentary evidence this has been an issue over and over again with this Tenant, warnings since November 2010 and it is much more than noise. This is the second time the Tenant's guest has broken into his room causing damage to the building.

DS advised this is a security issue and referred to the photos they provided in evidence which show the date and time and proves the Tenant is bringing in this guest after 11:00 p.m. , as late as 1:00 a.m. and also proves the Tenant is giving this unwanted guest his key fob to enter the building unescorted. DS said they have given this Tenant several warnings; he avoids staff by coming in late at night, and ignores the warning letters they serve him.

In closing JS stated the Tenant has presented a systemic disregard for other tenants and the Landlord. She said that it is obvious this Tenant is not prepared to change so they would like him to leave as he continues to disrespect his neighbours and the building.

The Advocate noted that there has been an ongoing conflict with the Tenant being allowed to have guests so he takes to bringing them in late at night. He is of the opinion that there is no compelling evidence that the guest broke the door. He believes letting the guests use his key fob to come into the building without escort to be juvenile.

The Tenant argued that he believes the Landlords want him gone so they can renovate his suite and raise his rent and that they offered him \$500.00 to move.

DS refuted the Tenant's statement arguing that they have offered the Tenant the return of his security deposit, even though the door has been damaged to encourage him to move because of the issues he has caused. He stated the Tenant has made false accusations and that this issue is primarily about the security and safety of the other tenants and has nothing to do with the amount of rent the Tenant is paying.

Analysis

I have carefully considered the aforementioned, and the documentary evidence which included, among other things, a copy of the 1 Month Notice, photos from the Landlord's security cameras, copies of breach letters issued to the Tenant, and copies of letters of complaints from other tenants.

The 1 Month Notice to End Tenancy cited the following reasons for issuance:

Tenant has allowed an unreasonable number of occupants in the unit/site

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

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property
- 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

Tenant has caused extraordinary damage to the unit/site or property/park

I am required to consider the Landlord's evidence not on the basis of whether his testimony "carried the conviction of the truth", but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions and evidence before me.

Upon reviewing the grounds selected for why this Notice was issued I note there is insufficient evidence before me to support the Tenant has allowed an unreasonable number of occupants in the unit/site, or the tenant has engaged in illegal activity, or the Tenant has caused extraordinary damage to the unit/site or property/park. Therefore I find the Landlord's application to end the tenancy on these grounds must fail.

For the remaining grounds: the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant or his guest has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant or his guest has damaged the landlord's property; and the tenant or his guest has put the landlord's property at significant risk; I find as follows:

I accept the Landlord's evidence that the Tenant's guest was caught on their security video, November 12, 2011, entering the building, without an escort, using the Tenant's key fob to gain unescorted access. I do not accept the Advocate's assertion that the Tenant giving this guest his key fob to be simply a juvenile act; rather after consideration of the events that have occurred prior to this date, I find the Tenant's action to have caused a significant safety risk to the staff and all other tenants.

I further accept that the evidence supports the Tenant has been given ample verbal and written warnings that his behaviour is cause to end his tenancy and that the Tenant was given a final warning on November 15, 2011, as supported by the Landlord's evidence.

Based on the aforementioned, I find the Tenant's disregard for the tenancy rules to be escalating in a manner that puts the Landlord and other tenant's health and safety at significant risk in addition to the risk of causing further damage to the Landlord's property.

Upon review of the 1 Month Notice to End Tenancy, I find the effective date of the Notice not to be completed in accordance with the requirements of the Act, and that it automatically corrects to the proper effective date of **December 31, 2011**, pursuant to section 53 of the Act. I further find that the Notice was served upon the Tenant in a manner that complies with the Act.

Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice; therefore the Notice is upheld and I hereby dismiss the Tenant's application to have the Notice cancelled.

Although the Landlords attended the hearing, they did not make an oral request for an Order of Possession during the hearing.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The 1 Month Notice to End Tenancy is in full force and effect and the effective date is **December 31, 2011 at 1:00 p.m.**, at which time the tenancy ends and the Tenant must vacate the unit.

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: December 14, 2011.

Residential Tenancy Branch