



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel the One Month Notice to End Tenancy.

One of the tenants, with an advocate and the landlord and two witnesses attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

This month to month tenancy started on September 05, 2008. Rent is due on the first day of each month and the landlords served the tenants with a One Month Notice to End Tenancy on December 28, 2011 in person. This notice has an effective date of January 31, 2012 and gave three reasons to end the tenancy as follows:

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;

The landlord testifies they have no evidence that the landlord's property has been put at significant risk and states this section of the Notice may have been checked in error.

The landlord testifies that the tenants have allowed a person (SD) into the building who has been disturbing other tenants by knocking on other tenants doors often late at night, barging in to other tenants units when they answer their door and demanding money, and the use of the other tenants phone. SD has also offered sexual favours to other tenants. The landlord testifies that he also has suspicions of illegal drug use by the tenants.

The landlord testifies that SD is a known guest of the tenants and has been seen on many occasions going to their unit on the 8th floor. The landlord states he has instructed his staff team and security team to intercept SD and challenge her as to her purpose in the building. The landlord has provided a log of memos from his security staff in which they document encounters with SD. The landlord testifies that when challenged SD tells his staff team that she is expected at the tenants unit and has been escorted to the tenants unit where SD enters the tenants unit without challenge from the tenants.

The landlord testifies that the tenants were sent a warning letter which informed them that they are responsible for the actions and behaviour of SD as she is a guest or visitor to the tenants unit. The tenants were warned in December 2010 that if they do not take responsibility for SD actions and prevent disturbances to other tenants they face a possible eviction because of it.

In December 2011 the landlord testifies he was still receiving complaints from other tenants in the building about SD's activities. One tenant complained that SD would knock on his door and when the door was opened she would barge into his unit. On one occasion she obtained this other tenant's telephone number and repeatedly called him until he changed his number. On December 28, 2011 after the tenants had been served with the One Month Notice SD was seen again going into these tenants unit, then later seen knocking on the door of another tenant.

The landlord testifies that the female tenant came and spoke to him about this person and stated to the landlord that she was not aware of SD's behaviour in the building or that SD was in their unit.

The landlords first witness (RN) testifies that he is security personal for the building. This witness testifies that he witnessed SD leave the tenants unit at 12.28 p.m. and the door was closed behind her. The witness testifies that he did not hear any exchange between the tenants and SD. The witness testifies that he had a suspicion that SD was going up to the 16th floor so he went to the 16th floor and found SD standing outside another tenants unit. SD asked the witness if he was following her. The witness testifies that he had instructions from the landlord that SD should not be loitering inside the building. Whenever SD saw the witness she would go to the tenants unit on the 8th floor. On these occasions sometimes it appeared that she let herself into the tenants unit and other times she was let into the unit after knocking. The witness testifies that he has seen SD go into other tenants units but not for at least a year.

The tenants advocate cross examines the witness and ask the witness if he saw that the door to the tenants unit was unlocked when the witness saw SD enter the tenants unit. The witness relies that he is not suggesting that he knew the door was unlocked just that he observed that at least 25 percent of the time SD did not have to knock on the tenants door but entered without knocking as if she was expected because the door would have to have been unlocked for her to enter.

The landlord next witness (MO) is also security personal at the building. The witness describes times he saw SD enter the tenants unit. The witness testifies that he was getting off the elevator on the fourth floor when he saw SD. When challenged she told the witness she was going to the eighth floor. The witness states he went to the eighth floor and saw SD knock on the tenants' door, the door was opened and SD was accepted into the tenants unit without hesitation. The witness testifies that this was typical for SD to enter the tenants unit in this manner. The witness testifies that he has seen SD at the entrance to the building on a number of occasions and has seen SD being buzzed into the building and then making her way to the tenants' floor.

The witness testifies that on January 18, 2012 he again saw SD in the elevator and she told him she was expected at the tenants unit. On this occasion SD walked straight into the tenants unit because the door was open for her because he states the tenants would have buzzed her into the building. The witness testifies that he has never seen SD have trouble getting into the tenants unit.

The tenants advocate cross examines this witness and asks the witness if he has ever found SD to be aggressive. The witness replies that he has been told she has been aggressive when barging into units of some seniors living in the building and she will not leave until they give her money. The advocate asks the witness if he has ever stayed to see when SD leaves the tenants unit. The witness replies that after seeing her enter the unit he goes and files his memo concerning his observations.

The landlord testifies that two other tenants had also been giving warning letters concerning SD about eight month ago. The landlord also testifies that the tenants have never filed any complaints about SD gaining entry into their unit or problems with SD barging into their unit. The landlord has provided a copy of the memo log record detailing SD's activity in the building. This evidence was sent to the tenants by registered mail.

The tenant attending testifies That SD was a friend of his girlfriend the other tenant. He states his girlfriend would try to help SD as she is a "street walker". The tenant testifies that in December 2010 he asked one of the landlords security men MO if SD was allowed into the building and states MO informed the tenant that that she was allowed into the building but must leave the building after she had visited the tenants at their unit. The tenant states they are not responsible for SD after she has left their unit and are not responsible for anything SD does to other tenants because some other tenants also let SD into their units. The tenant testifies that this is a busy building and they cannot be held responsible for letting SD into the building.

The tenant testifies that after they got the first warning letter from the landlord both he and his girlfriend stopped welcoming SD into their unit. The tenant testifies that SD forces her way into their unit the same way she does to other tenants. The tenant testifies that after she has forced her way into their unit he raises his voice to her and tells her he will phone the police if she does not leave. The tenant states he is reluctant to use force to remove SD from his unit. The tenant testifies that several hours later SD will buzz the intercom to be let into the building. The tenant states their television is set to see who is coming into the building but the picture is not very clear to determine if it is SD. The tenant also testifies that on occasions the buzzer will go and someone will say their name. The tenant states as this system is not very clear he sometimes gets SD's name confused with another friend of theirs so they let the person into the building only to find it was SD.

The tenant testifies that SD was someone he met first but she then became his girlfriend's friend. SD is known to frequent another tenants unit. There is an older man who is a tenant who gives SD beer and money. The tenant testifies that they have not made a complaint to the landlord about SD as they feel the landlord would say they had let SD into the building.

The tenants Advocate states the tenants have lived in the building for five years and have been good tenants. The Advocate states the tenants are now being unfairly

targeted by the landlord. The Advocate states the landlord needs to deal with the security system in the building to prevent access to SD as SD is not an invited guest of the tenants and the landlord has provided insufficient evidence to show that the tenants do invite SD into the building and their unit.

The tenants have provided written statements detailing how they met SD and encounters with SD over the term of their tenancy. These statements also detail how SD forces her way into the tenants unit and the steps taken to physically remove her from their unit.

The landlord disputes the tenants' Advocates statement that these tenants have been good tenants. The landlord testifies that there have been problems with these tenants behaviour in their unit and they have disturbed other tenants and have been seen rummaging in the garbage despite having been told not to do so. The landlord testifies that he has seen the tenants himself allow SD into their unit and was standing outside the tenants' door when SD was allowed into their unit without challenge from the tenants. The landlord states that even after the Notice to End Tenancy was served upon the tenants, SD has been observed walking right into the tenants unit. The landlord testifies that the front door of the building is kept locked and the tenants buzz SD into the building where she either goes directly to the tenants unit or goes to other tenants units and creates disturbances. On one occasion the Police were called who had to escort SD from the building.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony 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 landlords' witnesses are two of the security personal working in the building who gave testimony as to their encounters and observations of SD entering the tenants unit. The landlord also gave testimony of his observations of SD entering the tenants unit. The landlord has provided documentary evidence in the form of extracts from the daily memo records which detail events pertaining to SD's entry into the building and the tenants unit. This memo log also details other tenants concerns and complaints about SD knocking on their doors asking for money and causing a disturbance often late at night.

The tenant argues that SD has not been an invited guest of the tenants since December 2010 and they have also been disturbed by SD barging her way into their unit. However the tenants' verbal testimony contradicts his written account of how SD was made to leave their unit when he testifies that he did not want to use force to remove SD but simply raised his voice and threatened to call the police.

The landlord's evidence shows that SD was able to enter the tenants unit on occasion without knocking as if she was expected and on other occasions without challenge from the tenants. I also find that the tenants' evidence is less then credible when discussing how SD entered their unit and how SD was asked to leave their unit. Consequently I find on a balance of probability that the landlord has meet the burden of proof that SD continued to be an invited guest of the tenants even after the tenants received a warning letter and the Notice to End Tenancy because of SDs behavior in the building.

However, the landlord must also meet the burden of proof that SD, as a guest of the tenants, significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and how SD seriously jeopardized the health or safety or a lawful right or interest of the landlord or occupant.

I have considered the arguments put forward by both parties and reviewed the documentary evidence presented. On a balance of probabilities it is my decision that SD, as a guest of the tenants, did disturb other tenants living in the building by knocking on their doors, barging into their units and asking for money and to use their telephones. I have no evidence that this person SD also offered sexual favours to other tenants or if she had what the outcome of these offers were or if the favours were freely accepted by other tenants. The landlord has also voiced suspicions of drug activity but has no evidence to support this. Therefore, I find there is no evidence to support the landlord's grounds to end the tenancy because the tenants guest has seriously jeopardized the health or safety or a lawful right or interest of the landlord or occupant.

While tenants are entitled to have guests in their unit tenants must be aware that they are responsible for the actions of their guests while they remain on the property. The tenants argue that once SD had left their unit they had no responsibility for her actions. However a landlord must protect all tenants' right to quiet enjoyment of their rental units. A landlord must take action if other tenants' rights to quite enjoyment of their rental units, or common areas, has been disturbed by a guest of other tenants.

Consequently, it is my decision that the tenants guest while allowed on the property by the tenants has significantly interfered with or unreasonably disturbed other occupants of the building and the reason giving on the One Month Notice to End Tenancy is upheld. Therefore the tenants application to cancel the One Month Notice to End Tenancy is dismissed.

During the hearing the landlord verbally requested an Order of Possession for February 21, 2012. Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause dated December 28, 2011 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on February 21, 2012. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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: January 26, 2012.

Residential Tenancy Branch