



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenancy commenced in March 2010 and the tenant is required to pay subsidized rent of \$320.00 on the 1st day of every month. The tenancy agreement includes a Crime Free Addendum and House Rules that the tenant has received. The rental unit is characterized as being a Single Room Occupancy (SRO) of approximately 200 square feet and located in a building operated by the city to provide housing to low income individuals over the age of 45 years. The tenant meets the above-described criteria.

On December 8, 2011 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the tenant's door. The tenant disputed the Notice within the time limit permitted under the Act.

The Notice has an effective date of February 1, 2012 and indicates the reasons for ending the tenancy are:

- 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:
 - 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

The landlord served the tenant with two warning letters previous to the Notice, the first being February 4, 2011 (the parties agreed the letter erroneously indicates a date of February 4, 2010) and the second on February 14, 2011. The landlord submitted that since the warning letters there have been numerous verbal conversations between the tenant and the landlord's staff persons with respect to noise levels and people coming and going from the unit and partying in the unit. The landlord has also had issues with the tenant giving his keys out to non-occupants of the building and allowing homeless people to use the shared shower facilities.

It was an incident took place on December 2, 2011 which finally resulted in the issuance of the Notice. The landlord described the events that took place on December 2, 2011 as follows. When the landlord arrived at the residential property at 7:15 a.m. his staff person advised him to keep an eye on the rental unit as there were noise complaints received with respect to the rental unit and the tenant had guests in his unit. At approximately 7:30 a.m. the landlord approached the rental unit and observed the door of the rental unit open. The landlord told the tenant to keep the noise down and suggested the guests should leave. The tenant became upset and proceeded to yell and act aggressively toward the landlord. The landlord left the rental unit and called 911 for police assistance. Two police officers initially arrived and the tenant and another person who had been in the unit were fighting. Then four more police officers arrived and arrested one of the tenant's guests. Later that same day another noise complaint was received about the rental unit. The landlord observed five guests in the unit and there was more yelling and shouting and threats hurled at the landlord.

The landlord submitted that the tenant frequently has guests arrive late at night or the early morning hours, including the tenant's young adult nephews, and that the unit is used to drink and party. The tenant's guests often "tailgate" through the secured front doors by following other occupants or guests in the front door. If the staff enquires as to the destination of these individuals who are tailgating they indicate they are going to the rental unit or the unit adjacent to the rental unit. I heard that the same guests frequent both units and will go back and forth between the two units.

The landlord's staff persons testified that the residential building is known to be rather tolerant and do not evict very often; however, the tenant's conduct is very disturbing to

others and the tenant is not receptive to talking about the issues or changing his behaviour when he is requested to do so. Rather, the staff persons submitted that when the tenant is reminded to keep noise levels down the tenant becomes offensive, swears at them, and shows no empathy for others, especially when intoxicated.

The landlord's staff persons described how there is often 10 – 15 guests that visit the rental unit to drink and listen to music during one of their shifts. The staff persons described the environment in the rental unit as a drop in place people use to drink and party before going to night clubs. The staff persons stated that they have received numerous complaints about noise in the rental unit from other tenants. Also, people have been observed partying in the room when the tenant is not home.

The landlord's staff persons submitted that the tenant frequently drinks heavily. Recently the staff person received a complaint that the tenant was passed out in a common area. The staff person had to practically carry the tenant back to his room.

One of the witnesses called by the landlord has lived across the hall from the rental unit for approximately 1.5 years. He described how he has been woken up numerous times at 2:00, 3:00 and 4:00 a.m. due to noise, yelling, and slamming sounds coming from across the hall. The witness testified that initially he tried talking to the tenant about the noise but now the witness complains to the staff. The tenant's advocate questioned the witness's ability to ascertain whether noise was coming from the rental unit or the adjacent unit. The witness acknowledged that the noise comes from either the rental unit or the unit next to it but that he can determine the location of the noise. The witness also explained that the guests and the tenants of those two units go back and forth between the units.

With respect to December 2, 2011 the witness described 6 or 7 police officers arriving at the property, two men fighting in the hallway and the police arresting one of the men. The witness was uncertain as to the identity of the other men fighting in the hallway but described them as being two black men.

A second witness was called by the landlord. The witness described how people banged on the front door approximately two weeks prior to the hearing because the door was locked and that the people were there to visit the tenant. The witness also testified that he observed the tenant passed out on a table in the common area.

Documentary evidence submitted by the landlord included copies of: the tenancy agreement; Crime Free Addendum; House Rules; the warning letters from February

2011; the Notice to End Tenancy and the letter that accompanied it; and, several pages of excerpts from the landlord's log book.

The tenant replied to the landlord's submissions as follows: A staff person did not come to his unit December 2, 2011 to advise him of a noise complaint. The tenant was entertaining a female guest when another guest arrived and brought another male that the tenant did not want in his unit, which is why he left the door to his unit open. When the landlord came to the unit the tenant told the landlord he wanted the unwelcome male removed from his room and that it was the landlord that decided to call the police. The tenant and this male person were not fighting although the male person was arrested outside of the building for an unknown reason.

With respect to noise complaints the tenant submitted that the people at the front door are not coming to see him as described by the staff persons. Rather, the tenant submitted that because the visitors are the same colour and speak the same language as the tenant the landlord and the staff assume the visitors are there to see him. The tenant was of the position the landlord and the staff persons are fabricating evidence because they are racists and have a personal issue with the tenant. The tenant questioned why the adjacent unit was given a warning letter yet the tenant was given an eviction notice especially considering the last warning letter he received was nearly a year ago. The tenant described himself as being a nice, quiet tenant with an occasional guest.

The tenant's advocate pointed out that the landlord did not issue three warning letters before issuing the Notice to End Tenancy, as submitted by the landlord. Rather, two warning letters were issued in February 2011 and then the Notice was issued in December 2011 with no warning letters in between that time frame. The advocate also pointed out that some of the events described by the witnesses took place after the Notice to end Tenancy was issued. The advocate requested that each of the entries in the landlord's log book excerpts be scrutinized as to their content and unit number.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Upon consideration of all of the evidence before me, I provide the following findings and reasons.

I find there is insufficient evidence for me to conclude that the tenant engaged in illegal activity and I do not end the tenancy for illegal activity. Nor do I find sufficient evidence the tenant has put the landlord's property at significant risk and I have not considered that reason further. I proceed to consider whether the landlord has established that the tenant has significantly interfered with or unreasonably disturbed other occupants or the landlord. I also proceed to consider whether the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Upon review of the landlord's log book entries and upon hearing from the landlord, the staff persons and witnesses, I am satisfied that there is frequent and heavy drinking by the tenant. The tenant did not deny this. I find it likely the tenant's behaviour, as with most people, changes while intoxicated. Based upon the consistent testimony of the landlord and the staff persons, I accept that the tenant's behaviour when he is intoxicated is argumentative and aggressive. Being intoxicated is not in itself a reason to end a tenancy; however, if the behaviour that comes from being intoxicated is significantly interfering with or unreasonably disturbing others then there is a basis to end the tenancy.

The disturbing behaviour has been described as being frequent excessive noise during the early morning hours as well as aggressive behaviour. It is undisputed that the tenant has been warned of such disturbing behaviour, in writing, in February 2011. The issue is whether that behaviour has recurred since the warning letters were received. I find, based upon the testimony of the landlord's staff persons, their log book entries, and the testimony of the witness, that the tenant has continued to entertain guests, drink, and make unreasonable noise in the early morning hours that has repeatedly and frequently disturbed other occupants since the warning letters were issued.

Considering the landlord has an obligation to protect the quiet enjoyment of other tenants living at the property I find the tenant's denial of his disturbing behaviour leaves me unconvinced that his behaviour is temporary or likely to change in the near future. Since the tenant has received warning letters in the past and the behaviour has recurred, I find the tenant's submission that he should have been given another warning letter to be unpersuasive. Rather, I am satisfied that a continuation of this tenancy would allow frequent and unreasonable disturbances of other occupants to continue.

The landlord also submitted he encountered aggressive and threatening behaviour from the tenant on December 2, 2011 despite a warning about threatening behaviour in the February 4, 2011 letter. I find threatening behaviour towards the landlord or the landlord's staff is unreasonably disturbing behaviour in any event.

With respect to the December 2, 2011 incident, I accept the landlord's version of events over that of the tenant as I find it more likely than not that the tenant was intoxicated at the time. I find it unlikely the landlord would call 911 to accommodate the tenant's request to have an unwelcome guest removed from his unit, as suggested by the tenant during the hearing. Therefore, based on the balance of probabilities, I find that the tenant was acting aggressively and in a threatening manner towards the landlord as submitted by the landlord during the hearing and as recorded in his log book entries and the letter that accompanied the Notice to End Tenancy.

I find the tenant's submission that the landlord is racially motivated to end the tenancy or wishes to end the tenancy due to a personal issue to be uncorroborated by any other evidence.

Considering all of the above, I am satisfied that the landlord has established sufficient grounds to end the tenancy on the basis the tenant, or a person permitted on the residential property by the tenant, has significantly interfered with or unreasonably disturbed other occupants or the landlord. I am also satisfied that the tenant has jeopardized the other occupants lawful right to quiet enjoyment and the landlord's lawful right to conduct business free from threatening behaviour. Therefore, I uphold the Notice to End Tenancy with the effect that this tenancy shall end.

I note that the effective date of February 1, 2012 as stated on the Notice is non-compliant with the Act. The effective date on a 1 Month Notice must fall on a day that is the day before rent is due. Since rent is due on the 1st of the month, the effective day must be the last day of the month. To move the effective back to January 31, 2012 would be consequential to the tenant; therefore, the effective date is changed to read February 29, 2012. Accordingly, the tenant must vacate the rental unit and return vacant possession to the landlord no later than 1:00 p.m. on February 29, 2012.

Conclusion

The Notice to End Tenancy has been upheld. The effective date has been changed to read February 29, 2012 to comply with the requirements of the Act. The tenancy shall end and the tenant must vacate the rental unit by 1:00 p.m. on February 29, 2012. The tenant must vacate the rental unit by

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 10, 2012

Residential Tenancy Branch