



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause dated January 19, 2012.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started in November 2007. The parties' have been involved in the following previous proceedings, most of which dealt with the Landlord's allegations that the Tenants have been selling illegal drugs from the rental unit:

- On June 5, 2008, the Tenants' application to cancel a One Month Notice was granted on the grounds that the Landlord had provided insufficient evidence to support the grounds alleged on the Notice;
- On July 19, 2011, the Landlord's application for an early end to the tenancy was dismissed (in part) on the grounds that the Landlord had provided insufficient evidence that the Tenants were selling drugs from the rental unit;
- On September 8, 2011, the Tenant's application to cancel a One Month Notice was heard however, the Landlord agreed to withdraw that Notice based on the Tenants' agreement to other terms.

On January 19, 2012, the Landlord's agent (A.R.) served the Tenants in person with a One Month Notice to End Tenancy for Cause dated January 19, 2012. Neither party provided a copy of this Notice as evidence at the hearing however they agreed that the Notice alleged the following grounds:

- Tenant has engaged in ***illegal activity*** [emphasis added] 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

The Landlord's agent claimed in the previous proceedings heard on September 8, 2011, the Tenants agreed to maintain the rental unit in "a state of decoration and repair that complies with health, safety and housing standards required by law." The Landlord's agent provided photographs of the Tenants' suite that he said the building superintendant, M.J., took on or about January 17, 2012. The Landlord's agent argued that the messy condition of the Tenants' suite would attract rodents and other pests which would affect the health and well-being of other occupants in the rental property.

The Landlord's agent also claimed that there have been many complaints from other residents in the rental property of many people coming and going from the rental unit at all hours of the day and night. The Landlord's agent said he believes these people are drug addicts and are purchasing drugs from the Tenants. The Landlord provided written statements from two different residents of the rental property as to their observations however the Landlord's agent admitted that the names of the deponents had been removed from the copies of the statements served on the Tenants. The Landlord's agent claimed these deponents did not want to be identified out of fear of reprisal from the Tenants. The Landlord's agent said one tenant has moved out of concern for his safety and he has received notice from another tenant that they also intend to move out for the same reason.

The Landlord's building superintendant (M.J.) and building caretaker (A.R.) both gave evidence that they had witnessed many people coming and going from the rental unit and on at least one occasion had caught a suspicious person attempting to break in and that person claimed they were going to the rental unit. The Landlord's agent argued that the constant stream of people coming and going from the property is a threat to the safety of the other occupants in the rental property and to the Landlord's employees. The Landlord's agent said he is also very concerned about repercussions to the Landlord if someone is harmed by one of the Tenants' guests who he claimed were at time aggressive and threatening to other occupants and the Landlord's employees.

Analysis

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. The Tenants' advocate pointed out that RTB Policy Guideline #32 (Illegal Activities) sets out the elements a party must prove in order to establish cause under the grounds relied on by the Landlord and argued that the Landlord had not met the burden of proof. RTB Policy Guideline #32 states at p. 1 as follows:

“Illegal activity would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. ***The party alleging the illegal activity has the burden of proving that the activity was illegal.*** Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.”

I find that the Landlord has not provided sufficient evidence that the Tenants have engaged in an illegal activity. Although the Landlord's agent and witnesses argued that drug activity was obvious from the constant stream of people coming and going from the rental unit, I find that this on its own is not sufficient to prove illegal activity. Furthermore, I find that the witness statements provided by the Landlord have little to no value because the deponents were not identified on the Tenants' copy and the deponents did not attend the hearing to be cross-examined on their statements. In support of his position, the Landlord's agent also argued that the police have attended the rental unit many times in the past 8 months due to alleged illegal activity. Although the Landlord listed 14 incident report numbers, he provided no other evidence to substantiate what these incident reports said.

The Landlord further argued that the Tenants failed to keep the agreement they made on September 8, 2011 to keep the rental unit reasonably clean and he relied on the photographs taken by M.J. on January 19, 2012 as evidence of this. The Tenants' advocate objected to these photographs on the grounds that the Landlord had illegally entered the rental unit to take the photographs. Although the Landlord's agent argued that M.J. “found the rental unit door open” and “took pictures only from the doorway,” I find this unlikely and also find it equally improbable that he could have taken photographs of the interior of a bedroom and bathroom from the front door of the rental unit. In any event, the grounds set out on the One Month Notice did not allege a breach of this agreement. Furthermore, the Landlord provided no evidence of any rodents or other pests in the rental unit or of any damage to the rental unit.

In short, the Landlord is seeking to end this tenancy **solely** on the ground that the Tenants have engaged in ***illegal activity***. Consequently, even if the Landlord had shown other occupants were significantly disturbed by the Tenants' visitors or that there was damage to the rental property, this would not be enough to satisfy the burden of proof because the Landlord would also have to prove an illegal activity. Had the Landlord's agent claimed only that the other occupants and the Landlord were significantly disturbed by the actions of the Tenants' “visitors,” the result may have been different. However, in this hearing as in the previous hearings, the Landlord relied on witness statements where the deponents were not identified. As stated above and in previous decisions, ***anonymous statements are of little to no value in dispute resolution proceedings because they deprive the other party of any ability to address the credibility of the deponent or the reliability of the statement.***

The final difficulty with the Landlord's case in this matter is that the Landlord's agents did not provide a copy of the Notice to End Tenancy which they were seeking to enforce. As the burden of proof is on the Landlord to show that the Notice to End Tenancy is enforceable, the Landlord has the onus of providing a copy of the Notice to End Tenancy as evidence at the hearing. In the absence of a copy of the Notice to End Tenancy and in the absence of any agreement from the other party as to what information appears on that document, there is no way to determine if the Notice is enforceable under s. 52 of the Act.

For all of these reasons, I find that there is insufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause dated January 19, 2011 and it is cancelled.

Conclusion

The Tenants' application is granted. The One Month Notice to End Tenancy for Cause dated January 19, 2012 is cancelled and the tenancy will continue. 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: February 21, 2012.

Residential Tenancy Branch