



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 the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and his observer; the landlord's agent and witness.

During the hearing, the landlord's agent did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on December 7, 2011 for a month to month tenancy beginning January 1, 2012 for the monthly rent of \$475.00 due on the 28, 29, 30, 31 of each month with a security deposit of \$237.50 paid.

The tenant provided a copy of an email from the landlord to this tenant dated April 23, 2012 confirming the two female tenants would be vacating the rental unit and goes on to say: "Under the circumstances with everything going on I think it would be best that you follow suit & move out on this date as well [May 31, 2012]." The agent testified the circumstances referred to were personal circumstances related to the landlord.

The landlord's agent testified the residential property has 2 separate rental units and the upper unit had three tenants, each with a separate tenancy agreement with the landlord, with a total rent for the upper unit of \$1,500.00. The landlord's agent testified that the landlord did offer to have this tenant stay in the rental unit but that he would be responsible for the full amount of rent the landlord had been receiving, from all three tenants.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued on April 28, 2012 with an effective date of May 31, 2012 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably

disturbed another occupant or the landlord. The tenant testified he received the notice on April 28, 2012 after finding it posted to the rental unit door.

The landlord's agent testified the tenants in the lower rental unit had complained to the landlord of noise issues with the upper tenants and on February 18, 2012 the landlord wrote an email to the female tenants advising them that "the tenants in the lower suite are 12 shift workers & are hearing chairs in the kitchen being dragged across the floor, load feet & laundry being done late at night".

The landlord, in that email, also requested the female tenants pass the email or information on to the male tenant. The landlord's agent testified no further written warnings were provided to the tenants.

The agent went on to testify that at the end of March 2012 the landlord was informed by the tenants from the lower unit that they would be vacating the rental unit due to the noise problems with the tenants in the upper unit. The agent further testified that the female tenants from the upper unit also advised the landlord on or about April 15, 2012 of their intention to vacate the upper unit.

The landlord has provided an email from the former lower unit tenants attesting to the reasons they left were because of noise problems with the tenants in the upper unit. The landlord has also provided an email from one of the former female tenants from the upper unit. In this email the female tenants state: "...we're not sure that our discomfort can truly be called "unreasonable disturbance" or "interference". Generally, we are just not the best fit as roommates."

The landlord's agent testified the property is currently listed for sale and that the condition of the unit, particularly this tenant's room is so messy and unclean that it has resulted in difficulty in selling the residential property.

The landlord's realtor provided testimony that while she has not had any personal showings other than an open house on April 29, 2012, she has received reports from other realtors regarding the terrible condition of the rental unit. The witness indicated that other than her open house all of these showings occurred in May 2012.

Both parties also provided testimony regarding the landlord's assertion that the tenant has had conversations with potential tenants and as a result the potential tenants have decided against renting the either unit.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if among other causes, the following applies:

- a) 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,
- b) The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

As the landlord did not indicate in the 1 Month Notice to End Tenancy for Cause that one of the causes to end the tenancy was that the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property, I find that even if these events occurred the landlord cannot rely upon them as a cause to end the tenancy based on the Notice issued on April 28, 2012.

In addition, in regard to the landlord's claim that the condition of the rental unit contributes to the interference by the tenant, from the landlord's witness's testimony all of these events and reports from realtors have occurred after the April 28, 2012 Notice was issued and so cannot be considered as a factor in ending the tenancy.

However, I caution the tenant that as a result of the events within the last month of this tenancy and the evidence and testimony provided at this hearing the tenant should consider that he has been sufficiently warned that these issues are of such serious concern to the landlord that she may consider ending the tenancy if the tenant continues to engage in this behaviour.

And finally as to the disturbances of other tenants, I find, based on the landlord's email evidence, the landlord has failed to establish the two female tenants from the upper unit had complained about being unreasonably disturbed or interfered with by this tenant.

Further, despite the landlord's email of February 18, 2012, that was sent only to the female tenants, I find the landlord failed to provide the male tenant, directly, with any kind of written warning that there had been complaints or that the consequences of the continued behaviour may be termination of the tenancy.

Despite there being three tenants in the upper unit, each of the tenants had a separate tenancy agreement with the landlord and as such, the landlord must provide written warnings to all tenants individually and not rely upon other tenants to provide their roommates with warnings.

As well, the landlord has provided no evidence that the disturbances that were bothering the lower unit tenants directly resulted from this tenant or the two female tenants who also resided in the upper unit.

Conclusion

For the reasons above, I find the landlord has failed to establish sufficient cause to end the tenancy. I therefore cancel the 1 Month Notice to End Tenancy for Cause issued on April 28, 2012 and find the tenancy to remain in full force and effect.

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: May 31, 2012.

Residential Tenancy Branch