



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 tenant's application to cancel a One Month Notice to End Tenancy for cause.

The tenant and the tenants advocate along with the landlords agent and the landlord attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross examine each other 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

Is the tenant entitled to have the One Month Notice cancelled?

Background and Evidence

The parties agree that this tenancy started on April 01, 2006. Rent for this unit is now \$782.12 and is due on the first day of each month in advance.

The landlord's agent testifies that the tenant was served a One Month Notice to End Tenancy on June 26, 2012. This Notice was issued on June 26, 2012 and has an

effective date of July 31, 2012. The Notice provides the following reasons to end the tenancy:

- 1) 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
- 2) The tenant knowingly gave false information to prospective tenants or purchaser of the rental unit/site or property/park.

The landlord's agent testifies that there have been over 20 incidents involving the tenant. The landlord's agent testifies that recently one of these incidents occurred when his mother (the landlord) was in her unit above the tenants. The landlord heard a disturbance outside and saw a number of people including the tenant and the tenant's young son. These people were hanging around on the stairs and appeared to be drunk. One of the tenant's friends was hitting the wooden stairs with a rock which had broken the step. The landlord asked the group what they were doing and people in the group insulted the landlord and one person threatened to burn the landlord's house. The landlord told them she was going to call the police and promptly did so. The police attended at the property and spoke to both parties. The landlord's agent states that due to the rising tension between the tenant and landlords over the last few weeks the police remembered the landlords and asked the landlords not to talk to the tenant.

The landlord has provided photographic evidence to show the broken step and a 2 second short video clip of his mother leaning over the balcony stating she is going to call 911. The landlord's agent also testifies there is a video of one of the tenant's guest challenging his mother to come down. The landlord's agent states that some of the tenants friends live in the same street and the landlords and their family are afraid of the tenant's actions and the threats made against the landlords.

The landlord's agent testifies that the tenant was sent a letter to remove her garbage from the side of the house as the landlords had prospective tenants coming to view a vacant unit. The landlord's agent testifies that the tenant went ballistic and another of the tenant friends threatened the landlords. The landlord's agent has made an allegation that this person was the tenants advocate as he recognises her voice.

The landlord's agent testifies that his mother is highly allergic to cigarette smoke and for the last six months the tenant or her guests have been smoking cigarettes in the tenants unit and the smell filters into the landlords unit. The landlord has provided a letter from her doctor relating to her allergy to cigarette smoke. The landlord's agent testifies that he is not an expert but there are other very strong smells filtering into the landlords unit late at night which he suspects is the smell of a type of drug. The landlord's agent testifies that the landlord has also seen the tenant coming out of her unit in the day time in an altered state and they suspect the tenant is under the influence of an illegal substance.

The landlord's agent testifies that there was a party in the property next door which the tenant attended. The tenant told relatives and prospective tenants that the landlords building was a terrible place to live and they should not move in. The landlord's agent testifies that in doing so the tenant prevented the landlord from re-renting the unit by giving false information to prospective tenants. The landlord's agent agrees he was not at the party and was told the tenant had said these things by a third party. There was also an incident when the landlord was showing a vacant unit to prospective tenants where the tenant interrupted the landlord and the tenant's son was running about in his underwear.

The landlord's agent testifies that they have gone out of their way to upgrade the tenants unit to meet the requirements of the city but his parents and family now live in fear in their own home and are afraid to use the garden, the laundry or to walk down the street.

The landlord's agent verbally requests that the One Month Notice is upheld and seeks an Order of Possession. The landlord's agent states they recognise that the tenant is a single parent and state they are willing to extend the time for the effective date of the Notice to September 15, 2012.

The landlord joins the call and testifies that she witnessed the tenant's friends along with the tenants and the tenant's son on the stairs. The landlord states they were drunk and smoking and the landlord heard a banging noise so looked out to see what was going on. The landlord testifies she saw one of the tenant's friends banging the stairs with a stone. When the landlord shouted at them to say she was going to call the police they started to laugh at her and one woman said they would burn this house.

The landlord testifies that one night she smelt strong strange things in her house and when she woke up the next morning she could not wake up properly and felt drunk with a bad headache. The landlord testifies that they called the police again. This happened a second time when the landlord became dizzy with the smell of smoke. After the police had come one of the tenant's friends told the landlord, in a threatening manner, that they are going to have a big problem. The landlord testifies she is very afraid of the tenant and her friends.

The tenants advocate strongly denies ever threatening the landlord and states the landlord's agent's accusations are unfounded and inappropriate. The tenants advocate states she is an independent behavioural consultant and has worked with the tenant and the tenant's son providing support for two years due to the tenant's son's neurodevelopment disorder and Autism Spectrum Disorder.

The tenant disputes the landlords' claims. The tenant testifies that she has lived in her unit for six years and never had any problems until she had to complain to the health inspector about conditions in her unit. Since that time the landlords have not spoken to her. Prior to this the landlord would allow the tenants to smoke on the balcony and the

tenant disputes the landlords claims that they are afraid of her as she states they pass regularly in the garden and outside the unit.

The tenant disputes that either she or her guests smoke in her unit or take any illegal substances. The tenant states she is a recovering heroin addict and has been clean for nearly seven years. The tenant testifies she has regular urine tests done at her doctors to prove she is clean of drugs.

The tenant testifies that when the landlord asked her to clean her belongs from the deck it was in March and the unit the landlord states was vacant was not vacant until May. The tenant testifies she did remove her belongings and garbage and sent the landlord a letter concerning items which did not belong to the tenant (provided in evidence).

The tenant disputes the landlord's agent and the landlords account of the incident on the steps. The tenant testifies that a friend was leaving her unit and was going down the wooden steps. A step split in half, as the wood is rotten, and her friend fell down the stairs. The tenant testifies that no one was drunk and the tenant used her foot to put up the broken step so she and her son could avoid standing on it again. The tenant agrees her friend was banging with a rock but states her friend was banging in the nails which were sticking out of the rotten step. The tenant testifies that her son was not present during this incident as he was sleeping at a friend's house down the street. The tenant denies threatening the landlord or that her friends have issued threats. The tenant testifies that a police officer came to see her and the officer put the tenant in touch with victim support services as the police considered the tenant to be the victim.

The tenant's advocate states the landlord has no experience in making a judgement that the tenant was under the influence of drugs. The tenant's advocate states there is no police report or restraining order in place for the tenant which shows that no threats had been made. The tenants advocate states she is obliged to file a report to the Ministry if the tenant cannot provide care for her son and the tenants advocate states she has never had to take this step.

The tenant testifies that the landlord is telling lies about the tenant to the neighbours the tenant states her son has special needs and does not like to wear clothes. He does wear Pull Ups and the tenant disputes that her son is the reason the landlords potential tenants were put off from renting a unit because they saw a small boy running around in Pull Up pants or because he has toys out.

The tenant states that this notice is in retaliation because the tenant called the health inspector about the condition of her unit and the allegations are all unfounded and untrue.

The landlord's agent cross exams the tenant and asks the tenant if he told the tenant to put any deficiencies such as the stairs in writing to the landlord. The tenant replies that she did not do this as the landlord had witnessed the broken step so would have been aware that it needed to be repaired because the wood is rotten.

The tenant declines to cross examine the landlord.

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. 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.

I have considered both arguments in this matter and find the majority of the landlords evidence is either based on hearsay or there is insufficient corroborating evidence to meet the burden of proof. The landlord has provided some quick time video of an incident on the stairs in which the landlord states she is going to call 911. The landlord's agent testifies that the video also shows the tenants friend telling the landlord to come

down however this is not clear on the video and the landlord has provided no evidence to show that the tenant or her guests were damaging the stairs just photographs and quick time video of the damaged steps. I find it reasonable that if the stairs did break when the tenants friend was walking down the stairs that the tenants friend would use a rock to bang the nails into the wood to prevent further accidents on the stairs.

The landlord's agent has testified that there have been 20 incidents involving the tenant however the landlord has only described this one incident on the stairs, an incident with garbage, which the tenant did remove, and incidents concerning smoking. The landlord has no evidence to show that the tenant knowingly gave false information to a prospective tenant as described by the landlord and as the landlord has provided no witnesses to these conversations this is regarded as hearsay. The landlord has provided no corroboration evidence to show that the tenant or the tenant's guests have been smoking in the tenants unit or that there has been any illegal drug use.

The tenant argues that her son being in Pull Up's or having toys out would not be sufficient to put off prospective tenants and I find the landlord has no corroborating evidence to show this occurred.

I further find that the landlord and the landlord agent argue that the landlord's family are afraid of the tenant and the tenant's guests however the landlord's agent was willing to extend the time for the tenant to move from the rental unit for another one and a half months which leads me to believe that the landlord's fear of the tenant and her guests is exaggerated.

Consequently, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated June 26, 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: July 26, 2012.

Residential Tenancy Branch