



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued for cause on July 20, 2012 be cancelled?

Background and Evidence

The parties agreed they entered into a month to month tenancy that began on December 1, 2006. Rent is subsidized and currently payable on the first of each month in the amount of \$216.00. The rental unit is a three bedroom townhouse located in a complex consisting of 26 units.

The Landlord submitted a chronology of events and 13 exhibits into evidence which included, among other things, copies of: the tenancy agreement; written complaints about unacceptable behaviour received during August 2011, September 2011, February 2012, July 19, 2012, and July 25, 2012; warning letters issued to the Tenant September 12, 2011 and February 28, 2012; and a copy of the 1 Month Notice issued July 20, 2012.

The Landlord asserted that the Tenant's teenage son and his friends have been significantly interfering with the quiet enjoyment of other tenants. She stated that she has witnesses standing by who could testify that the Tenant's son and his friends have been partying at all hours of the day and night, having fast loud cars driving through the complex, are involved in underage drinking and drug activity. The Landlord alleged that these young adults have also threatened other tenants when they are approached and requested to quiet down.

The Caretaker stated that since a new tenant moved in next door he has received numerous verbal complaints about noise and loud partying and marijuana smoking involving the Tenant's son. He advised that he spoke directly with the Tenant's son, who was polite with him, however the complaints continued so he suggested the next door neighbour put her complaints in writing and submit them to the office. The Landlord confirmed that because of the two previous warnings (September 2011 and February 2012) the Notice was issued the same day she received the next door neighbour's written complaint and had it delivered to the Tenant the next morning.

Witness #1 submitted that she moved into the rental unit next door on May 1, 2012 and has suffered constant noise, loud music, and a severe fire hazard with smoke butts left to smoulder. She stated that she cannot use her home as intended because her young son is too scared to sleep in his room due to the loud music and banging from next door. She asserted that the loud music starts as early as 9:00 a.m. and goes until 10:45 or 11:00 p.m. on most days. She attempted to resolve the issue by speaking with the Tenant's son and advising him that her small child needs to rest which was responded with "F... you". Then on July 19th or July 20th, 2012 she was awoken at 12:52 a.m. to a domestic fight happening at the end of her driveway between a female and the Tenant's son. She called the police and then put her complaints in writing to the Landlord.

Witness # 2 affirmed that she used to live in the complex for approximately 1 ½ years and moved out just last week. She submitted that the Tenant's son has a number of friends who constantly party at the rental complex and take over the park. She stated that she did not allow her small children to play in the rental unit park because the Tenant's son and his friends party, leave garbage, urinate, spit, and vomit all over the playground. She said she even witnessed one of his friends steal a car from the parking lot. She did not call the police however another neighbour did. She spoke about one incident when these young adults were partying and she noticed the next morning that they had been in her back yard and had used her patio furniture because they left dishes behind which she returned to the Tenant's son. She said that she never put her complaints in writing; instead she requested to be moved into a different complex when she was required to move into a smaller unit.

The Tenant submitted that she has addressed issues with her son when they are brought to her attention. She pointed out that she had only received two previous warning letters, one in September 2011 and the other in February 2012 and she heard nothing again until she received the 1 Month Notice on July 20, 2012. She

acknowledged that she is at work every day however she is home every evening and there is no loud partying going on.

The Tenant asserted that her son was not 19 yet, and he does not play loud music; rather he plays video games all day. She argued that there has been no trouble for the past year and had someone told her there was an issue she would have addressed it. She confirmed the domestic dispute occurred near the end of July late one evening which involved her son and an ex girlfriend whom he was telling to leave, but she would not go away. In closing she noted that there has not been any trouble for the past year and she had nothing further to add that was not already listed in her written submission.

A discussion followed when I explained to the Tenant how her son and his friend's behaviour or actions could affect her tenancy, regardless of their age.

The Tenant affirmed she understood that in the future if the Landlord verifies that other occupants, tenants or the Landlord's Agent(s) are being disturbed by anyone residing in the rental unit or anyone allowed on the rental property by the Tenant or her son or daughter who are partying or creating the presence of marihuana smoke anywhere on the rental property which encroaches on other rental units or areas where young children are located, the record of these events, along with a copy of this written decision, would form part of the Landlord's case should it again come before a dispute resolution officer for consideration.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- 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.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

I have carefully considered that after the warning letters were issued to the Tenant in September 2011 and February 2012, the Landlord did not receive another written complaint until July 19, 2012. There was no other communication directly with the Tenant until the 1 Month notice was issued on July 20, 2012. Given the evidence before me, I have no doubt that the Tenant's son and his friends have unreasonably disturbed other occupants or tenants; however, the Tenant was not notified of the recent issues and was not given an opportunity to rectify the problems. Furthermore, I find that as of this proceeding the Tenant has been sufficiently informed of the disturbances and is now aware of her responsibilities.

Based on the aforementioned I find that the Landlord has not succeeded in meeting the burden of proof for ending this tenancy. Accordingly, the 1 Month Notice to End Tenancy issued on July 20, 2012, is cancelled.

After consideration of the circumstances before me I decline to award the Tenant recovery of the filing fee.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued July 20, 2012 is HEREBY CANCELLED and is of no force or 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: August 21, 2012.

Residential Tenancy Branch