



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 cancel a *One Month Notice to End Tenancy for Cause* (the Notice) issued July 10, 2012.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Landlord received the Notice of Hearing documents on July 20, 2012. It was also established that the parties exchanged their documentary evidence.

Issue to be Decided

Should the Notice issued July 10, 2012, be cancelled?

Background and Evidence

The Landlord's agent gave the following testimony:

The Landlord's agent testified that this 10 year tenancy has been difficult and that 4 other occupants in the rental property have complained about the Tenant within the last two months. She stated that there have been 5 warning letters provided to the Tenant since June 1, 2012.

The Landlord's agent testified that the Tenant had a guest living with her who was not approved by the Landlord, as required in the tenancy agreement.

She stated that the Tenant has frequent visitors who stay for a few minutes and then leave. The Landlord submitted that another occupant's child had seen one of her regular visitors (MG), who is known to police, drop a bag that seemed to contain marijuana. She stated that 4 baldheaded bearded men were seen at the rental unit and

that police have had to come to the rental unit on two occasions in the past couple of months. The Landlord's agent suggested that the Tenant and her guests are drug users.

The Landlord's agent testified that the Landlord and the Tenant had a meeting on June 19, 2012 and that they agreed that if the Landlord had any more complaints with respect to loud parties, drinking, drug use, or yelling and foul language, the landlord would end the tenancy. The Landlord's agent stated that the Tenant was given two weeks to comply or the Landlord would issue a Notice to End Tenancy. The Landlord stated that the Tenant did not comply and has continued to give the Landlord cause to end the tenancy since issuing the Notice.

The Landlord stated that the Tenant was warned not to harass other occupants about the warning letters or to try to determine who had written them.

The Landlord provided copies of letters in evidence.

The Tenant provided the following testimony:

The Tenant stated that she plays music during the day, but is usually in bed by 8:30 or 9:30. She testified that she finds it difficult to leave her home and requires home care due to being confined to a wheel chair. She stated that therefore she has people visiting her, sometimes at night, including her Mom, son, homecare worker, and friends.

The Tenant testified that her guest moved out on June 23rd or 24th.

She stated that MG, is not a drug user. She testified that he often visits her and other occupants in the rental property, running errands for them. The Tenant stated that he sometimes comes over and they cook a meal together. She stated that the bag that MG dropped contained batteries for a battery operated airplane that they fly together, but that the child may have seen some herbs (not marijuana) that he used when preparing a pasta meal. The Tenant stated that she used to have a drug problem, but that she has been clean since the end of May, 2012. The Tenant provided a note from her Doctor confirming that she has been on maintenance therapy since May 28, 2012; that she has regular urine drug screening done and also occasional random drug screening.

The Tenant stated that her mother has custody of her son and that she is working hard so she can see him more often and ultimately regain custody.

The Tenant stated that she has not harassed the other occupants in the building. She stated that she simply asked if they had complained so she could understand the complaints against her.

The Tenant stated the police were present twice in the past couple of months: once to do a “bed-check” for the guest who was living with her, pursuant to her guest’s probation conditions; and once as a result of someone spraying graffiti on her door. She stated that neither time was as a result of anything that she or her invited guests had done. The Tenant provided copies of letters of support in evidence.

The Landlord’s agent gave the following reply:

The Landlord’s agent said the support letters were not substantiated because they were not written on letter head. She stated that the Tenant was no longer a good “fit” in the rental property.

Analysis

A large amount of documentary evidence was provided by both parties. I have carefully considered the documentary evidence, together with the oral testimony provided.

When a tenant seeks to cancel a Notice to End Tenancy, the onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notice.

The Notice includes the following reasons for ending the tenancy:

1. Tenant has allowed an **unreasonable number of occupants** in the unit.
2. Tenant or a person permitted on the property by the tenant has:
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. seriously jeopardized the health, safety or lawful right of another occupant or the landlord; and
 - c. put the landlord’s property at significant risk.
3. Tenant has engaged in **illegal activity** that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The Landlord provided no evidence that there were an **unreasonable number** of occupants living in the rental unit. Therefore I find that the Landlord has not proven this reason for ending the tenancy.

I find that the Landlord provided insufficient evidence that the Tenant has engaged in **illegal activity**. The letters provided by the Landlord from other occupants contain vague allegations including, but not limited to allegations about “unsavory” people coming and going from the Tenant’s home; vague allegations about “men bringing ladies for approximately 30 minutes and returning to pick them up”; tinfoil with drug residue found in the common area. There was no corroborating documentary evidence to support the Landlord’s conclusion that the Tenant or her guests were drug users or that they were “known to police”.

I find that the Landlord also failed to provide sufficient evidence that the Tenant, or a person permitted on the property by the Tenant, has done any of the things alleged in point two of the reasons as set out above. I do not accept the Landlord’s agent’s submission that the letters of support for the Tenant should not be considered. Names and telephone numbers were also provided on their letters of support. They include a letter from MG; her housecleaner; her mother; three neighbours; a community health worker; and a home care provider.

I find that the Tenant had a right to know the nature of allegations against her and the identity of the people making those allegations in order for her to defend herself against the allegations.

Having found that the Landlord has not provided sufficient evidence to end the tenancy for the reasons noted on the Notice, I find that the Notice is not a valid notice. I grant the Tenant’s application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Notice to End Tenancy issued July 10, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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 14, 2012.

Residential Tenancy Branch