



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 the landlord's agent.

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

Issue(s) to be Decided

The issues to be decided are 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 parties agree the tenancy began in January 2012 as a month to month tenancy for a current monthly rent of \$425.00 due on the 1st of each month with a security deposit of \$312.00 paid. The parties agreed the tenant was paying \$625.00 at the start of the tenancy and when the new owner's purchased the building they lowered the tenant's rent.

The landlord submits the tenant has allowed a number of people to stay in the rental unit and that it appears to be different people at different times. The landlord stated it was difficult to tell how many people were staying there. The tenant testified that his wife stays with him 3 days per week.

The landlord submits the tenant allows a number of people into the building and that many of these people have threatened other tenants in the building including the landlord's agent. The tenant submits he only has his brother and cousin drop by and that he was unaware of any complaints that they were threatening anyone.

The landlord testified the tenant causes damage to the walls on a regular basis for which the landlord must repair these holes and as such the landlord's property is at significant risk. The tenant submitted that he was unaware of any holes requiring repairs. The landlord also testified the tenant had installed cameras out of his unit

facing the back of the building. The tenant testified he removed the cameras after the landlord warned him about them.

The landlord submits the police have come to see the tenant and that the tenant is suspected of selling drugs out of his rental unit. The landlord was unaware of any charges against the tenant for this activity. The tenant testified the police have come to see him because he lodged a complaint against a manager of the residential property who he states broke into his rental unit.

The landlord has submitted two complaints, one by way of a verbal complaint and one a written complaint. In the case of both complaints the landlord has withheld the names of complainants. The landlord also noted that many people will complain but due to the nature of the neighbourhood they are not willing to put things in writing or attend a hearing as a witness.

The verbal complaint states that tenants have noticed the back door is open all the time; "all going to 117 Wills"; and someone almost got bear sprayed "when he ask the guy can u handel the situation".

The handwritten complaint states that he lives above the tenant and then goes on to say: "This man keeps threatening me and I don't feel safe in this building. The complainant goes on to say that many other tenants feel the same way.

The landlord testified the tenant was spoken to and was provided with several warning letters, provided in evidence. The warning letters are dated from August 16, 2012 to August 21, 2012 and with the following notices, in chronological order:

- Advising the tenant to remove cameras – states: "this is a warning"
- Complaints from other tenants about letting up to 20 people a day in and out of the back door. Requests the tenant keep the door closed – states: "again this is a warning."
- Complaints from other tenants about the tenant's guests using the bathroom to administer medication and leaving their syringes in the bathroom – states: "again this is a warning."
- Complaints from other tenants about the aggressive and violent behaviour of the tenant and his guests. The letters indicates that should this happen again the landlord will seek termination of the tenancy – states: "again this is a warning."
- A second reminder about removing the cameras – states: "your last warning".
- Advising that the police have enquired about the tenant and his guests and that the landlord has provided the police with a key – states "again this is your last warning."

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) 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
 - iii. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

When a landlord issues a notice to end tenancy for cause, the burden is on the landlord to provide sufficient evidence to establish the causes he asserts he has to end the tenancy.

In the case before me, the landlord has provided testimony of receiving complaints but has not provided the names of anyone who has complained nor are there any witnesses willing to provide testimony. As such, I have before me only the landlord's testimony. I note the tenant disputes all aspects of the landlord's testimony.

In the case of verbal testimony, I find that where both the landlord and tenant agree on events or occurrences, there is no reason why such testimony cannot be accepted. However when the parties disagree with what was occurred or happened, the verbal testimony, by its nature, is virtually impossible for a third party to interpret when trying to resolve disputes.

As such the burden rests with the landlord to provide additional evidence or witness testimony that will corroborate the assertions and allegations that the landlord may have relied upon in issuing the 1 Month Notice. I find the landlord has provided no evidence or witness to corroborate the causes the landlord is relying upon to end the tenancy.

Further, even if the events occurred, I note the notices provided to the tenant were all given to the tenant within 10 days of the landlord issuing the 1 Month Notice to End Tenancy and as such, I find the tenant was not given sufficient warning to correct any behaviours that may have been complained about and that many of the warning letters do not provide any indication that the tenant's tenancy is jeopardy if he does not make appropriate changes.

For these reasons, I find the landlord has failed to establish that he has sufficient cause to end the tenancy under Section 47 of the *Act*. I also find, that through the act of issuing the 1 Month Notice to End Tenancy for Cause, the tenant should take heed of the landlord has provided sufficient warning of his intention to end the tenancy if the tenant is responsible for any of these activities in the future.

Conclusion

For the reasons noted above, I grant the tenant's Application in its entirety. I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on August 24, 2012 is cancelled and the tenancy remains 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: September 18, 2012.

Residential Tenancy Branch