



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, OLC, O

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause. The tenant also took issue with the landlord entering her rental unit without proper notice under the Act and the fact that the landlord only provided a post office box number at the landlord's address.

Both parties appeared and gave affirmed testimony in turn.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence

The tenant is disputing the reasons given for issuing the One Month Notice to End Tenancy for Cause.

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated November 8, 2012 and effective December 31, 2012. The One-Month Notice, indicated that the tenant had engaged in illegal activity that adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord, and jeopardized a lawful right or interest of another occupant or the landlord.

Evidence submitted by the landlord included written testimony from the landlord's caretaker and copies of communications from other renters. One of the other residents stated that they had witnessed an alleged incident on November 7, 2012 and testified that the tenant entered another occupant's room and removed a TV remote control from the room.

The landlord testified that this incident did genuinely occur and that this was the basis for issuing the One Month Notice to End Tenancy for Cause. According to the landlord's agent, such conduct by the tenant is an illegal activity that had adversely affected the quiet enjoyment, security, safety, or physical well-being of the other occupant and also jeopardized a lawful right or interest of another occupant or the landlord. The landlord acknowledged that no police file, nor criminal charges, had resulted from the tenant's intrusion.

The tenant denied entering the other occupant's room and stated that she merely retrieved the remote control from the hallway, which is a common area. The tenant testified that she always takes care of herself and avoids interfering with anyone else. The tenant testified that she is a very good tenant and was even paid for doing some extra cleaning of the common areas.

The landlord testified verbally and submitted written testimony confirming they have a policy in the rental complex to deal with situations when serious complaints are received against any renter. According to the landlord, their caretaker is permitted to issue a notice to end the tenancy "*when a room mate does not work out*". The landlord testified that this particular tenant has generated complaints and "*for the sake of a peaceful co-existence*" it would be best that this tenancy end.

The tenant does not agree that any part of her conduct would warrant a termination of the tenancy under the Act.

With respect to the tenant's claim that the landlord has entered her room without proper written notice, the tenant stated that she is aware that the landlord's caretaker has been in her room without permission on more than one occasion.

The landlord's caretaker testified that nobody representing the landlord has ever entered the tenant's room without first providing a valid written notice.

In regard to the dispute over the landlord's service address, the tenant pointed out that only a post office box number was provided for the landlord and this was not acceptable.

The landlord argued that the address as given is a complete and valid address. The landlord pointed out that telephone numbers were provided for contact as well.

Analysis

With respect to the issue of whether or not the tenant had engaged in an illegal activity that compromised the quiet enjoyment, security, safety, or physical well-being or jeopardized a lawful right or interest of another occupant, I find that, even if I accept that

this tenant had wrongfully entered another occupant's room without permission, this single incident would not suffice to terminate the tenancy for cause. I also find that, the conduct in question, even if true, would not fit the category of being an "illegal activity".

Residential Tenancy Guideline provides some guidance with respect to what criteria must be proven to support a claim that the activity is illegal.

Guideline # 32 states:

The term "*illegal activity*" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects other occupants or the landlord.

In this instance, I find that the police were not contacted and the conduct in question, if it did occur, would be considered more in the realm of a trespass or intrusion by the tenant without the occupant's permission, not "illegal activity" contemplated by the Act.

Section 28 of the Act protects every tenant's right to quiet enjoyment and a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the landlord does have a serious responsibility to ensure that the right to quiet enjoyment for all of the tenants is protected. I find that the tenant's conduct, if it transpired as described, could, if repeated, be seen as significant interference or unreasonable disturbance of other occupants, which is also a valid basis to issue a One Month Notice to End Tenancy for Cause.

However, if such conduct was confirmed as having occurred, I find that it would be incumbent upon the landlord to first issue the tenant a written warning stating that this behaviour will not be tolerated and could jeopardize the tenancy if it recurred in future.

In any case, this tenant denied that the alleged trespass had even occurred.

In light of the fact that the landlord has failed to sufficiently prove that any of the criteria listed under section 47(1)(e) of the Act has been satisfied, I find that I must cancel this notice to end tenancy.

That being said, the tenant is now aware that she will be held liable if she chooses to enter another resident's rental unit without permission, or takes any property that does not belong to her. I find that this tenant has fully accepted that engaging in the conduct that was described could place the future of her tenancy in serious jeopardy.

In regard to the tenant's claim that the landlord had entered the tenant's rental unit without adequate Notice, I find that section 29 of the Act states that a landlord must not enter a rental unit for any purpose unless the tenant gives permission or unless the landlord gives the tenant written notice at least 24 before the entry, in a document that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

or an emergency exists and the entry is necessary to protect life or property.

Section 29 (2) also states that a landlord may inspect a rental unit monthly in accordance with the Act.

The landlord confirmed that they are aware of this section of the Act and committed to fully complying with this section of the Act.

In regard to the tenant's claim that she was never given a valid service address, or adequate contact information for the landlord, I find that the address provided by this landlord does meet the landlord's obligation under section 13(2)(e), which states that

every tenancy agreement must contain the address for service and telephone number of the landlord or the landlord's agent.

Based on the above, I hereby order that the One-Month Notice to End Tenancy of November 8, 2012 be cancelled and of no force nor effect

Conclusion

The One-Month Notice to End Tenancy was cancelled and of no force nor effect and the parties confirmed that they understand their obligations under 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: December 18, 2012.

Residential Tenancy Branch