



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE GLORY HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Preliminary Issues

Upon review of the Tenant's application the Landlord confirmed that the Landlord was in fact a corporation and he was an employee or agent of the Landlord. Both parties were in agreement to my amending the application to include the corporate landlord's name and list the employee as an agent. The application was amended in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to set aside or cancel a 1 Month Notice to end tenancy issued for cause.

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

Should the 1 Month Notice to end tenancy issued April 15, 2013, be cancelled or upheld?

Background and Evidence

The Landlord submitted documentary evidence which included his written statement and a written statement from a witness.

The Tenant submitted documentary evidence which included a copy of the 1 Month Notice.

The parties confirmed that they entered into a verbal month to month tenancy agreement that began on May 10, 2012. Rent is payable on the first of each month in the amount of \$425.00 and on May 10, 2012 the Tenant paid \$212.50 as the security deposit.

The Landlord's Witness testified that he has resided in this building for approximately 2 ½ months and during that time he has lost a lot of sleep and missed work because of the noise coming from down the hall. He stated that he didn't know which exact unit the noise was coming from and he did not know these people but he thinks this involves a guy and a girl just down the hall. He hears yelling and screaming but he could not remember the dates when this happened. He stated that he has verbally complained to the landlord when this happens.

The Landlord and Agent submitted that the problems started when this woman began staying at the rental unit all the time. This is a single room occupancy hotel (SRO) and guests are supposed to be there between 8:00 a.m. and 11:00 p.m.; however, this female has been staying over almost every night. They drink and party and have their stereo loud which disturbs the other tenants.

The Landlord stated that on April 16, 2013, the Tenant came to his office mid afternoon and he told the Tenant at that time that his female friend had to leave and could not be in his room after 11:00 p.m. That night the noise was so loud that the Landlord was called by the Agent to attend the rental unit. When he attended and asked the Tenant to turn off the music and be quiet the Tenant swore at him, told him to go away and proceeded to turn his music up as loud as it would go. He said he went back to his office, called the police, and began to fill out the eviction notice. When the police arrived the Tenant refused to open the door so the Police asked for the eviction notice and he handed it to the Tenant and said "you are served". The Landlord submitted that the police officer chose not to break down the door and cause more damage and suggested that the Landlord go for a fast track eviction.

The Landlord confirmed that they have never issued the Tenant written warnings about inappropriate behaviour or noise complaints. They advised that the guest issue is a recent problem with the female and other male guests who show up after midnight. They told the Tenant that his female friend is banned from the building but he still allows her to stay after 11:00 p.m. at which time they now call the police.

The Tenant testified that he has allowed his female friend to stay overnight from time to time. He argued that the Landlord's description about what has happened is all lies because the police officer did not serve him with the eviction notice, the Landlord did. Also, they have never talked to him about noise problems. They have asked me not to have the female friend there after 11:00 p.m. but he is allowed to have guests sometimes and she is his guest. He stated that his guest does not cause that much trouble even though they have social drinks together and sometimes argue. He confirmed that the Landlord spoke to him about his female guest on the day the police came.

The Tenant's witness testified that on the date the police came there was no problem because no one was taken to jail that day. She said that since that date she has been leaving by 11:30 p.m. because she does not want to get the Tenant in trouble. She confirmed she stayed over this past weekend because the Tenant was ill and requested her assistance. There were no problems, no arguing, and no loud music on that day in April. She argued that the Tenant only has a clock radio and T.V. therefore he could not blast the music loud. She does not recall the Landlord coming to the door before the police came that day.

In closing the Landlord submitted that the noise level was extremely loud on April 16, 2013. All of the tenants on that floor were yelling at the Tenant to be quiet and to turn off the music and the Tenant was screaming back at them. The Agent stated that he has spoken to the Tenant on several occasions about his noise levels and they told the Tenant "enough is enough" that they were not going to put up with his behaviour anymore. They suggested that the Tenant find another place to live or stop the loud noise and stop having guests after 11:00 p.m. At no time did they tell the Tenant he would be evicted if the noise continued.

The Tenant's advocate pointed out that there were no written warnings issued; therefore, there was no way for the Tenant to know that his behaviour would cause him to be evicted. Also, the written witness statement indicates everything has been quiet since the eviction which is a contradiction to the Landlord's testimony. Based on these contradictions, they request that the notice be cancelled.

The Tenant confirmed that he understands that he could be evicted if the Landlord verifies that he or his guests have been arguing, drinking, playing loud music or the T.V. loud; or have been disturbing other tenants, after 11:00 p.m. at a future date. If that were to happen the record of these events and this decision would form part of the Landlord's case should it come before an arbitrator again for consideration of his eviction.

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 has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord

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.

The Landlord's testimony indicated that the Tenant was never issued written warnings nor has he been issued verbal warnings that clearly indicate to the Tenant that he may be evicted if the noisy behaviour continues or if he continues to allow his female guest to stay over in his room. Rather, the Tenant was only told to find another place to live if he did not want to follow the rules.

Section 47 1) (h) of the Act provides that the Landlord may end a tenancy by giving notice to end the tenancy if the tenant has not corrected the situation within a reasonable time after the **landlord gives the tenant written notice to do so.**

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove they have cause to end this tenancy in accordance with the Act. Accordingly, the only evidence before me was verbal testimony and a written statement that contradicted the Landlord's submission.

Therefore, I find the disputed evidence to be insufficient to meet the Landlord's burden of proof.

Based on the aforementioned I find that the Landlord has not succeeded in meeting the burden of proof for issuing the 1 Month Notice to End Tenancy issued on April 15, 2013, and I therefore cancel the Notice.

Conclusion

As I have determined that the Landlord has met the requirements of section 47 of the Act to end this tenancy for cause, I am granting the Tenant's application to set aside the 1 Month Notice to End Tenancy and this tenancy shall continue.

The 1 Month Notice to End Tenancy, issued April 15, 2013, 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: May 21, 2013

Residential Tenancy Branch

