



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 an application by the tenant for an order setting aside a notice to end tenancy for cause. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Does the landlord have sufficient grounds to end this tenancy?

Background and Evidence

This month-to-month tenancy formally commenced August 1, 2012 although the tenant said he was able to move in earlier. The monthly rent of \$850.00 is due on the first day of the month.

On May 28 the landlord issued and served the tenant with a 1 Month Notice to End Tenancy for Cause with an effective date of June 30, 2013. The landlord listed multiple reasons on the notice the most relevant of which is that the tenant, or a person permitted on the property by the tenant, had significantly interfered with or unreasonable disturbed another occupant or the landlord.

The rental unit is located on the second floor of a three story mixed use building. There are eight residential units and ten commercial units in the building. There is a laundry room on the second floor in a common area exposed to everyone. The landlord says that most of the residents are younger people and the turnover is low.

The landlord's concerns have arisen because since the tenant moved into this building there have been incidents and complaints that had never occurred or been received before. The landlord's witnesses said they received complaints about noise, late night visitors, over night visitors, noisy visitors, and people trying to access the building via the fire escape. The landlord filed a photograph taken by one of the residents which showed a man sleeping on the hallway floor in front of the tenant's door with a box of human feces next to him.

There was an occasion when the police were called to a noise complaint in the tenant's unit. When the police arrived whoever was in the unit refused to let the police in and

yelled obscenities at them. The police did not have a warrant so eventually they were forced to leave.

The landlord says there has also been an increase in damage to the building. The tenant's mailbox is broken; the light at the front door has been smashed; and the washing machine had to be repaired. The landlord says they never received a complaint about the washing machine or its coin operation before the tenant moved in.

The landlord testified they have heard from at least half of the units in the building; some more frequently than others. At one point they were receiving two to three calls a week. Some of the female residents have expressed discomfort and concern for their personal security.

The landlord filed copies of the bodies of the written complaints from the other residents but did not include their names on any of them. None of the other residents of the building testified at the hearing.

The landlord sent warning letters to the tenant on January 29 and May 6. They say they never received any response from the tenant.

The final straw was a day when shortly after a loud argument in the hallway involving a visitor at the tenant's, a heavy metal popcorn machine went out the tenant's kitchen window narrowly missing pedestrians below. The landlord suspects the machine was thrown out the window. That was when the landlord issued the notice to end tenancy.

Since the tenant was served with the notice to end tenancy, there have been no complaints.

The tenant testified that before he moved into this building he was homeless. His housing is partially funded by a program called "The At Home Project". This program tops up the housing allowance received by the tenant from the provincial ministry so he can afford a place to live.

The tenant admits to an extensive criminal history dating back to 1992 but says that since being housed through this program he has not been charged with any crime. He says that, with one exception, his record does not include any violent offences. The exception is an attempted murder charge, on which he was acquitted after trial.

The tenant admitted there was a time when he had a fair number of visitors but said there has never been more than six at one time. He also has friends stay with him for a

few days at a time – “couch-surfing” – a couple of times a month. Since he was served with the notice to end tenancy he has not had any guests stay over.

The tenant admitted the police have been to his unit twice. Once was after he and his girlfriend had been fighting. By the time the police arrived the fight was over. His girlfriend was taken to the psychiatric unit for a few hours of observation and no charges were laid.

The second occasion was when he was away from his unit and another man was there. The tenant said he had told this person not to open the door for anyone. He said he gave this instruction because he did not want company in the unit if he was not there. He explained that the other man was just a young fellow and if something came up he would not know how to deal with it.

The tenant admitted he occasionally propped the exterior door open if he was going out for a short time. He claimed that other residents do the same thing.

The tenant also said he used the fire escape as a means of entrance to his unit when he forgets his key.

The tenant admitted to going into the cash box on the washing machine when he has put money in and the machine fails to activate. He claimed that other residents do the same thing. He also stated that he repairs to the washing machine were unrelated to the cash box.

The tenant testified that he never received a mail box key when he moved in so he had to jimmy the mailbox to get his mail. Canada Post refuses to deliver his mail to this address now so he never received the warning letters from the landlord until much later when his housing counsellor spoke to him. He said he complained about the mailbox to the previous building manager but nothing was done.

The tenant admitted that the sleeping man in the photograph was known to him. He said he was not at home when this incident occurred. He did not know how the man got into the building but he did know that if anyone had asked the man to leave he would have gone without a problem.

The tenant described an argument between one of his guests and another resident of the building. According to the tenant, the argument had nothing to do with him and was started by the other resident. He said his guest was in a bad mood because they had just had an argument. It was shortly after this argument that the popcorn machine went

out the kitchen window. The tenant gave a detailed description of a series of accidents that led to the machine sliding off the table and out the window.

The tenant said there had been a break-in at one of his neighbours after he moved in. The neighbour who had been burgled accused the tenant of being involved. The police investigate the burglary and the tenant was not charged. The tenant suggested that this individual was the source of most of the complaints about him.

The tenant expressed the view that if the situation was really serious the landlord would have spoken to him personally.

The tenant also gave evidence about repairs he said were required. The first was his mailbox. The landlord said they had never received a request for repair from the tenant. The tenant said he spoke to the previous property manager and nothing was done.

The tenant also gave evidence that another tenant had placed large planters on the fire escape and this posed a safety hazard to him. The landlord testified that they had had the maintenance person inspect the building and he reported there was nothing on the fire escape.

Analysis

On an application of this kind the onus is on the landlord to prove the reason stated on the notice to end tenancy on a balance of probabilities. This is a lower standard than the standard of proof required in criminal proceedings, which is beyond a reasonable doubt.

The landlord's evidence does show there has been an increase in general disorder in the building since this tenant moved in. However, the landlord's evidence is weakened by the fact that the witnesses who testified on behalf of the landlord have, with one minor exception, not observed any of the activity directly and the written complaints filed by the other residents were essentially anonymous. Oral testimony and/or signed letters of complaint have substantially more evidentiary weight than anonymous complaints.

The tenant did testify and did submit a detailed written statement. He had an explanation for everything – some more convincing than others.

His evidence established the following:

- The tenant had lots of visitors, including frequent overnight visitors.

- Some of his company has caused a disturbance in the building and the tenant did not think this had much to do with him. For example, in the tenant's version of the argument between his guest and the other resident there was no mention of him doing anything to intervene or to calm the situation.
- He knew that some of the people who came to see him could cause trouble, which is why he told the young man not to let anyone in.
- The tenant uses the fire escape as a means of access to his unit.
- The tenant did not respect the other residents' need for security when he left the exterior door open, even if he thought it was for a short period of time.
- The person found sleeping in the hallway outside his door was known to him.
- When the tenant experienced problems with the washing machine he did not report them to the landlord and ask for a refund; he merely interfered with the coin box.

After hearing all the evidence the following suspicions are raised:

- The tenant was leaving the exterior door open so people could get into the building to see him.
- The tenant told his visitors how to use the fire escape to access his unit.
- The person found sleeping in the hallway outside his door was coming to see the tenant or to stay with him.
- The tenant was providing temporary housing for homeless people.

However, the evidence does not actually establish these suspicions, even on a balance of probabilities. As a result, I must find that the landlord has not met its' burden of proof and I must grant the tenant's application to set aside the notice to end tenancy.

The evidence does show that the tenant, once he realized his tenancy was at risk, could live in this building without problem. Since he was served with the notice to end tenancy there have been no complaints about noisy disturbances, strangers in the hallways or common areas, people on the fire escapes, or police attendances. If the landlord should again start receiving complaints from the other residents the landlord may always issue and serve a new notice to end tenancy, and, if the matter should proceed to a hearing everything that has happened since the start of this tenancy may be considered at that time.

Regarding the tenant's request for certain repairs the first point that must be made is that his application for dispute resolution did not ask for a repair order. However, even if it had, I would have dismissed it. There is no evidence that the tenant ever made a request to the current property managers for repairs to his mailbox or notified them that

it had been broken. Further, the complaint about the obstructed fire escape is just a smoke screen. I am not satisfied, based upon the photographs filed, that the planters, if they are any, would pose a significant obstruction in the event of a fire. The real problem is that they make accessing the rental unit by the fire escape more difficult for the tenant and possibly his guests.

Finally, a note about the tenant's complaint that the landlord did not speak to him personally about the complaints they were receiving. When a landlord is taking a complaint very seriously, the correct procedure is to give the tenant a written warning, give the tenant time to correct the problem, and if it is not, to issue and serve the notice to end tenancy. When a tenant receives a warning letter that is a statement that their tenancy is at risk and corrective action is required.

Conclusion

The One Month Notice to End Tenancy for Cause dated May 28, 2013 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the Residential Tenancy 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: July 29, 2013

Residential Tenancy Branch