



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 1-Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

The landlord filed a substantial package of written material as evidence. Included in the package were several complaint letters to the landlord from other residents of the building. The landlord advised that those letters had not been served on the tenant; only filed with the Residential Tenancy Branch. An arbitrator may only make a decision based on evidence that has been provided to the other party otherwise the principles of natural justice are breached. Accordingly any material filed, but not served on the tenant, has not been considered.

Issue(s) to be Decided

Does the landlord have grounds for ending this tenancy?

Background and Evidence

This tenancy commenced August 1, 2011 as a one-year fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent of \$590.00 is due on the first day of the month.

The rental unit is a bachelor apartment located on the fifth floor of a 19-story building. There are 20 other units on that floor. The tenant's ex-wife lives on the floor below the tenant, just one unit over. Both units have balconies.

The landlord testified that in September, October and November of 2012 they received a number of complaints from other residents about late night noise from the tenant's unit. On November 22, 2012 the landlord gave the tenant a breach letter warning the tenant that there was undesirable behaviour coming from his suite and that if those activities continued an eviction notice would be issued immediately.

According to the landlord there were no other complaints about the tenant until April 19, 2012. On that date there was a domestic disturbance involving the tenant, who was reported to be intoxicated. The police were called. On April 22 the tenant was given a warning letter that domestic disturbances would not be tolerated.

The security company's logs record complaints about loud noise, fighting, drumming, intoxication or fighting on June 7, June 16, June 21, June 24, June 25, and June 26. In addition, the landlord was receiving written complaints from residents on the same floor in May and June. The complaints were also about drinking, fighting and loud noise. The landlord said that one of the sources of noise is the yelling back and forth between the tenant's balcony and his ex-wife's balcony on the floor below.

The landlord said that the volume and continuous nature of the complaints about this unit led them to issue and serve a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord stated that since the notice to end tenancy has been served it has been quiet at the tenant's unit.

The tenant testified that his 22 year old son has been staying with him off and on for the past 18 months. His son had moved from the place he was sharing with his girlfriend into his father's apartment. About a month later the son's girlfriend started spending the nights there as well. In addition, his son's friend sometimes stays in the same unit.

From time to time, his son has gotten his own place and moved out but then loses his place and move back in with the tenant temporarily.

The tenant says there has been lots of fighting and partying by his son and his son's girlfriend. His son was charged with assaulting the girlfriend in February or March. A "no contact" order was imposed on the son but the girlfriend continued to spend nights at the tenant's place.

The tenant described a situation where his son was having an argument with the tenant's ex-wife; this argument included calling his ex-wife some bad names. The

tenant confronted his son about this in the hallway and there was a loud argument. The neighbours were unhappy about this.

The tenant acknowledged there was an occasion this spring when his ex-wife was at his place and was argumentative and mouthy. When she would not leave as requested he asked the night manager for assistance.

In June the tenant said he stayed at his ex-wife's place whenever his son was around. He testified that most of the complaints related to his son and his girlfriend. After he was served with the notice to end tenancy they found their own place and are no longer living with him.

The tenant did dispute the notice by filing this application for dispute resolution. The tenant paid the August rent and received a receipt which states: "For use and occupancy only; does not constitute reinstatement of the tenancy agreement."

The landlord made an oral request for an order of possession at the hearing.

Analysis

The evidence is clear that there has been too many people living in this small unit; that there have been frequent episodes in the past three months that would have unreasonably disturbed the tenant's neighbours; and that all those disturbances involved the tenant or someone permitted in the unit by the tenant. Whether the trouble was caused by the tenant or his son is irrelevant as the tenant is responsible for the behaviour of his guests. I find that the landlord does have cause to end this tenancy and that the 1 Month Notice to End Tenancy for Cause dated June 28, 2013 is valid. The tenant's application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord is entitled to an order of possession effective 1:00 pm, August 31, 2013.

Conclusion

The tenant's application is dismissed.

The landlord has been granted an order of possession effective 1:00 pm, August 31, 2013. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

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 21, 2013

Residential Tenancy Branch

