



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated June 30, 2013. The Notice alleges that the tenant: a) has allowed an unreasonable number of occupants in the rental unit, b) that the tenant or someone permitted on the property by him has; b i) significantly interfered with or unreasonably disturbed another occupant or the landlord, or b ii) has seriously jeopardized the health or safety of lawful right of another occupant or the landlord, or b iii) has put the landlord's property at significant risk, or c) has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Issue(s) to be Decided

Does the relevant evidence show, on a balance of probabilities, that the tenant has committed any of the conduct alleged in the Notice?

Background and Evidence

The rental unit is a two bedroom suite in a "fourplex." The fourplex was originally a duplex. Each duplex was later divided in two to make four suites. The tenancy started in October 2009. The respondent "landlord" is a representative of the owner. The monthly rent is \$900.00. The landlord holds a \$450.00 security deposit and a \$275.00 pet damage deposit.

The landlord alleges the tenant has a roommate but has not received the necessary approval to have one, as specified in clause 13 of the written tenancy agreement. In support of the allegation the landlord relies on what he considers to have been the tenant's own admission in that regard.

The landlord alleges that though the tenancy agreement prohibits the attachment of anything to the exterior of the building, the tenant has mounted two exterior cameras, screwed into the wood siding of the building.

The landlord says the tenant is selling marijuana from his suite. He has heard drug buying talk between the tenant and a visitor. He says the tenant has admitted to him that is how he supports himself. He submits the written statements of two of the three other tenants in the building as well as the statement of a daughter of a tenant to the effect that there is constant traffic in and out of the tenant's suite, the smell of marijuana is pervasive and the traffic is a risk to the small children of the tenants.

The other tenants also complain about the tenant's unfriendly pit bull dogs and how he does not clean up after them.

In response the tenant says the other two tenants who filed statements are out to get him evicted for reasons other than his conduct. He offers statements in support of the proposition that he is in fact a good tenant. The third of the other tenants in the building, a man who has lived there for about twenty years, signed a statement that he had had no trouble with this tenant. Neighbours from the up and down the street provided statements to the same effect.

The tenant says everyone in the building smokes marijuana (confirmed by the landlord) but he does not sell it, though he admits to a drug raid about two years earlier in which two ounces of marijuana were found, along with some guns the tenant denies knowledge of. The tenant was under "house arrest" until five months ago as a result.

The tenant says the cameras he has mounted around the house are because he had some trouble with some people years ago and, as well, the other tenants are taking his tools.

He says he has one dog, a pit bull, and that it doesn't bite or growl. He frequently has a second pit bull dog at the premise but says it belongs to a friend. During the hearing he referred to the dogs as "my dogs."

Analysis

Regarding the allegation of an “unreasonable number of occupants” I find the two persons in a two bedroom apartment are not an unreasonable number. The landlord has pointed to a provision in the tenancy agreement indicating that consent is required before the tenant can have any roommate and that the requirement is a “material term” of the tenancy agreement. A landlord is entitled to end a tenancy under s. 47(1)(h) “(h) the tenant where a tenant “(i) has failed to comply with a material term, and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;” but that is not the provision the landlord has indicated in the Notice. Further, there is no evidence of a written direction to correct the breach.

For these reasons the landlord has not substantiated that the number of occupants justified termination of the tenancy.

The facts offered by the landlord in support of the remainder of the reasons given in the Notice boil down to the allegation that the tenant is selling drugs, marijuana in particular, from the apartment. Such illicit activity, if established, could expose the landlord’s property to damage from police intrusion and to the threat of seizure as being property related to or used in the commission of a crime. As well, if established, such conduct may be unreasonably disturbing to other tenants and their families.

The evidence satisfies me that the tenant is selling marijuana from his rental unit and that such conduct is likely to jeopardize the lawful rights and interests of the landlord by exposing his property to the risk of damage and/or seizure and that the drug dealing is unreasonably disturbing the other tenants, as they allege. On the competing evidence I am particularly persuaded by the fact that the tenant has mounted surveillance cameras to his entrance. His explanation that it involves a concern over events happening years ago does not seem plausible. As far as can be determined, only the police have forced their way into the rental unit in the last four year the tenant has lived at this address. More plausible is the idea that the tenant is particularly concerned to know who is at his front door because he is carrying on an illicit activity exposing himself to invasion by the authorities and by rivals. I am also influenced by the fact that the tenant keeps one and likely two pit bull terrier dogs at this property. While such dogs can apparently be docile and controlled in the hands of the proper owner, they are widely known as having a propensity for extreme and unprovoked aggression. They are a breed often kept by persons intent on the tactic of intimidation. Indeed they appear to be having exactly that effect on some of the other occupants. Their presence is consonant with the tenant carrying on illegal activity, drug dealing, from his rental unit.

Conclusion

The landlord has established good cause for giving the tenant the Notice to End Tenancy. I uphold the Notice and dismiss the tenant's application. I grant the landlord an order of possession as requested at hearing. The landlord has accepted use and occupation money for August and so the order will be effective August 31, 2013..

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 08, 2013

Residential Tenancy Branch

