



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EY PROEPRTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated July 22, 2013, a copy of which was submitted into evidence.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

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

The burden of proof is on the landlord to justify the Notice.

Background and Evidence

The tenancy began in February 2006 and the rent is \$856.00. The Notice indicated that the reasons for terminating the tenancy were that:

- the tenant had allowed an unreasonable number of occupants in the rental unit;
- that the tenant or a person permitted on the residential property by the tenant has:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

In regard to the allegation that the tenant had allowed an unreasonable number of people into the suite, the landlord stated that numerous guests have been observed coming and going at all hours, and that it is obvious that other people are living there.

The tenant testified that, aside from occasional visits of a week or two from his sons, he and his co-tenant are the only occupants of the unit.

The tenant pointed out that he had recently been diagnosed with a serious chronic illness and that he receives visits from support group members as required. The tenant testified that other residents apparently made assumptions about the tenants and their visitors based on their appearance. The tenant testified that they have lived there since 2006 without incident and suddenly, the landlord seems bent on evicting them.

The landlord testified that there were several incidents that prompted the issuing of a One Month Notice to End Tenancy for Cause on July 22, 2013 and submitted 2 incident reports that predated the One Month Notice.

The landlord testified that one incident occurred on June 13, 2010 and involved guests of the tenant drinking around the pool, which is not permitted.

The tenant stated that this was a single occurrence involving his son who was visiting and did not know the rules. The tenant testified that it never happened again.

The landlord testified that the second incident involved the discovery that the tenant had a pet and had not paid a pet damage deposit and also that the tenant had been propping the side access door open in violation of the building rules. Submitted into evidence was a copy of a caution notice to the tenant dated October 22, 2011, about the pet deposit and demanding that the tenant cease propping the door open.

The tenant testified that, with respect to their pet cat, the previous manager had been aware of the pet for approximately 2 years prior to the letter of warning and had expressly waived collection of the pet damage deposit.

The tenant acknowledged that the exit door had been propped open occasionally while the tenant was taking out the garbage through that particular exit, which is in close proximity to the garbage disposal area. The tenant testified that, after being cautioned in 2011, they complied with the rules and have not propped the door open since then.

The remainder of the landlord's evidence, consisting of written incident reports and written complaints with obscured signatures, were dated *after* the One Month Notice to End Tenancy for Cause was already issued.

According to the landlord, the tenant's objectionable conduct escalated recently and has generated numerous complaints about people entering and leaving through the side exit door late at night, noise emanating from the tenant's unit, fights and arguments, foul language and one incident where a person known to be an associate of the tenant was found using drugs in the stairwell.

The landlord described a specific incident where the tenant was engaged in a confrontation with one of his guests that involved cursing and physical scrapping. The landlord also described a recent incident in which a complaint was made by the occupant of the rental suite below the tenant alleging that an injection needle fell from the tenant's balcony onto their balcony below.

The tenant denied that his guests were being allowed to enter and exit through the security exit door and stated that, although the door is nearest to 6 units on that side of the building, including the tenant's, it is also routinely accessed by occupants and guest of 24 different units. The tenant stated that he is being unfairly targeted by others. evidence.

In regard to the dates put forth in some of the incident reports from the landlord, the tenant was able to verify through hospital documents, that he was not physically residing in the building at the time that some of these alleged disturbances were witnessed, and in fact was hospitalized for several days during the period in question.

The tenant admitted to a confrontation with one individual, but pointed out that this person was not invited onto the premises by the tenant. In fact, according to the tenant, the entire conflict resulted from the tenant attempting to remove this individual from the premises, as he is apparently not permitted on site by the rental management.

The tenant has requested that the One Month Notice to End Tenancy for Cause be cancelled as the tenant's position is that the Notice is not justified.

Analysis

In regard to the causes put forth as warranting termination of the tenancy under section 47 of the Act, I find that the landlord has the burden of proof to establish that the tenant allowed an unreasonable number of occupants in the rental unit, that the tenant or a person permitted on the residential property by the tenant has significantly interfered with, or unreasonably disturbed, another occupant or the landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

Although the landlord has apparently received written complaints about the tenant's or their guests, alleged conduct, I find that the landlord failed to provide sufficient evidentiary proof to show that these allegations were properly investigated and independently reviewed. I find that conclusions based solely on complaints are not sufficient proof that the tenant is responsible for violating the Act or agreement.

In regard to the allegations that the tenant or a person permitted on the premises by the tenant, has engaged in illegal activity adversely affecting the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or jeopardizing a lawful right or interest of another occupant or the landlord. I find that, even if I accepted that the alleged incidents transpired as described by the landlord, I find that the all of the occurrences combined would not sufficiently meet the threshold to qualify as a valid basis for terminating this tenancy.

Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause is inadequately supported by evidence, and must therefore be cancelled.

However, I find that the tenant has now been sufficiently warned that if the tenant, or associates of the tenant, engage in conduct seen as significantly interfering with or disturbing others, it will likely jeopardize the tenancy and may result in termination of their agreement.

In light of the above, I hereby order that the One-Month Notice to End Tenancy dated July 22, 2013 be cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and the One-Month Notice to End Tenancy for Cause is cancelled.

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: September 10, 2013

Residential Tenancy Branch

