



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.

Issue(s) to be Decided

Does the landlord have sufficient grounds to end this tenancy?

Background and Evidence

This hearing was the second in three months between these parties. Details about the tenancy agreement, the nature of the building, and the landlord's concerns that are set out in the previous decision will not be repeated in this decision.

The tenant was successful on his previous application for an order setting aside a 1 Month Notice to End Tenancy for Cause primarily because at the last hearing the landlord had blacked out the names on the complaint letters and written statements from other residents of the building, thereby making them anonymous complaints; and because the evidence showed that once the tenant had been served with the notice to end tenancy the complaints to the landlord stopped.

The decision granting the tenant's application and continuing the tenancy was dated July 29. It would have been received by the parties sometime after that.

The landlord testified that within two weeks of the decision they received a complaint about a loud party in the tenant's unit which went from midnight to 5:00 am. On September 1 they received a report that a person was caught trying to break into the unit directly above the tenant's unit. The occupant of the upstairs unit ushered the person who was trying to break into his unit out and watched her go into the tenant's unit.

On September 5 the landlord sent the tenant this 1 Month Notice to End Tenancy for Cause and an explanation letter to the tenant and to his housing advocate. The landlord listed multiple reasons on the notice the gist of which is that the tenant, or a person

permitted on the property by the tenant, had significantly interfered with or unreasonably disturbed another occupant or the landlord and/or seriously jeopardized the safety and lawful rights of the other residents.

At this hearing three of the building residents testified. The first witness testified that he had lived in the unit above the tenant's unit for six years but that his sister and his friends had lived in the building for fourteen years before that so he was very familiar with it. His roommate, who was the second tenant to testify, had lived in the building for two years. The third witness had lived in the unit next to the tenant's for fourteen years and in a different unit in the same building for a year prior to that. The tenant and these witnesses occupy three of the eight residential units in this building.

All three witnesses described the incidents that were the basis of the previous notice to end tenancy; only this time under oath and with considerably more detail. They also described the incidents that have occurred since July 29.

All three witnesses described a formerly quiet, secure and pleasant place to live that has changed significantly in character since this tenant moved in. The other residents of the building were described as pleasant, professional and quiet. Although the witnesses all described the tenant as being pleasant and respectful in person they all said that as a result of the activity that now occurs in the building they have lost their former sense of security.

The first witness explained that his unit has a 180 degree patio which may be accessed on two sides by separate exterior fire escapes. He had never experienced a break-in until last year when they had a very serious robbery. After the robbery he found a tie and a syringe in his unit. After that he noticed ties and syringes in the hallways and around the building; something they had never observed before.

On September 1 his roommate was awakened by a woman trying to climb into the apartment window. She explained they needed money for a woman staying in the tenant's apartment who was very sick. The witness escorted her out of their apartment and saw her go into the tenant's unit.

There was also another incident where the first witness woke up to the sight of someone basically chinning himself on the bars outside his bedroom window. This person explained that he was a friend of the tenant's and the tenant had told him he could get into his unit by climbing/swinging in the bathroom window from the fire escape, which he did.

At the last hearing there was a photograph filed of a man sleeping in the hallway, outside the tenant's door, with a box of human feces beside him. The witnesses see this person in the building so often they know him by name, FB. They frequently see this person, and others, sleeping in the hallway outside the tenant's apartment door, waiting for someone to let them in.

The third witness, the man who lives next door to the tenant, described an incident late at night on September 10, 2013, where an older man and a younger woman were having a noisy fight in the hallway outside his apartment. When the witness opened his door and asked what's going on, the man let the woman go. She left the building and he went back into the tenant's unit.

The three witnesses described strangers in the hallway and around the building; people coming and going at all hours; multiple bicycles parked in the hallway outside the tenant's door; damage to the front door and light and common areas; continual requests from people buzzing and asking to be let into the building so they can go to the tenant's unit. They testified that for the past two months or so the tenant has not been locking his apartment door and there are lots of people around, even though the tenant is not there all the time.

The three witnesses also testified that the other residents of the building, most of who are single women, have expressed fear and that a family that lived beside the tenant moved out earlier. The property manager testified that at least one other tenant has given notice for December 1 if this tenant continues to live in this building.

The tenant testified that he lost his keys at the beginning of August. He did not want to rock the boat with his landlord so he did not report the loss nor did he ask for new keys. Eventually he was able to obtain a new front door key from his housing advocate, who had another copy, but she did not have an apartment key so he has not been able to lock his own door.

He testified that he was not at home during any of the recent incidents described by the other residents as he stays at his girlfriend's several nights a week. He did let his friend FB stay with him and FB, who is a dedicated "binner", did bring bedbugs into the unit, which he says he has dealt with. The sick woman described in the evidence is a friend and a user who he allowed to stay in his place for about three weeks. On September 7 he told her she had to leave. When asked, the tenant stated that about half of his company are drug users and that many of them are intravenous drug users.

The tenant repeated his claims from the previous hearing that he is not the only tenant who props the front door open. He also denied telling anyone they could gain entry to the building by climbing up the fire escapes.

Analysis

A tenant is responsible not only for their own behaviour but the behaviour of the people who come to his unit; either as invited or uninvited guests.

The evidence from the other residents of this building, all of whom are long term tenants and who gave very credible testimony, paint a compelling picture of a new disorder and lack of security in this building. It is noteworthy that although most of the tenants of this building are single women, not one appeared as a witness.

Although the tenant has not been personally aggressive or offensive to the other residents of this building, his actions have shown a lack of respect and consideration for their well-being.

For example, when he lost the keys to the building it apparently did not occur to him that this posed a significant security threat to the other residents of the building who rely on the front door to keep uninvited guests and strangers out of the common areas. Who knew who had the key or who was making copies of it or who they were providing those copies to? If the tenant had thought about his neighbours he would have reported the loss to the landlord so they could change the lock.

The tenant has allowed people who have significantly interfered with or seriously jeopardized the safety and lawful rights of the other residents to stay in his unit. These guests, or other contacts of the tenant and his guests, have learned that if they can get into the building, the tenant's unit is unlocked and accessible to them. They have also learned there are ways to get in and out of the building, including the fact that the front door is frequently propped open, something that did not happen before this tenancy. There is no evidence of the tenant doing anything to restrict the flow of people in and out of his unit.

The landlord has established, on a balance of probabilities, several of the reasons stated on the notice to end tenancy.

The notice to end tenancy stated the effective date of the notice to be November 30, 2013; which gives the tenant two months notice rather than one month's notice. There is nothing in the legislation that prevents a landlord from giving a tenant a longer notice

period than the minimum prescribed by the *Residential Tenancy Act*. Accordingly, this later effective date does not make the notice to end tenancy invalid.

The landlord's evidence is that the November 30 dated was an error; they had intended to end this tenancy on October 31, 2013. Section 53 allows an arbitrator to change the effective date of a notice to end tenancy if the effective date is earlier than the earliest date permitted by the legislation or is a date other than the day before the day the rent is due. It does not allow an arbitrator to shorten the notice period where a landlord has inadvertently given a longer notice period.

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, November 30, 2013. However, if the tenant does not pay the November rent when due the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent and takes steps to enforce that notice.

Conclusion

The tenant's application is dismissed. An order of possession effective 1:00 pm, November 30, 2013, has been granted. 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: October 18, 2013

Residential Tenancy Branch