



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions. Neither party submitted documentary evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2011; that the Tenant agreed to pay monthly rent of \$525.00 by the first day of each month; and that the parties had an addendum to their tenancy agreement which indicated that smoking was not permitted in the rental unit, that the Tenant was not permitted to use candles in the rental unit, that the Tenant was not permitted to make unwarranted 911 calls, that the Tenant would repair all damages caused by her; that the Tenant would take all her prescribed medications; that the Tenant would not visit with other occupants of this residential complex; that the Tenant would be respectful of her neighbour's property; and that the Tenant would report any complaints or concerns with her tenancy directly to the Landlord, between 9 a.m. and 9 p.m.

The Landlord and the Tenant agree that on September 30, 2013 a One Month Notice to End Tenancy for Cause was personally served to the Tenant, which declared that the Tenant must vacate by November 01, 2013. The Notice to End Tenancy indicates that the Landlord is ending the tenancy because the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest

of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord. A copy of the Notice to End Tenancy was not submitted in evidence however the parties agreed on the content of the Notice.

The Landlord stated that on two or three occasions in July of 2012 an agent for the Landlord was speaking with another occupant in that occupant's rent unit; that the Tenant stood outside the window and/or door of that occupant's rental unit and accused the agent of stealing a cat; that the Tenant was provided with a letter advising her to discontinue such behaviour; and that this particular incident was not repeated after the letter was served.

The Tenant stated that she did not accuse an agent for the Landlord of stealing a cat and she did not receive a letter of warning regarding this incident.

The Landlord stated that in August of 2012 the Tenant's neighbour reported that the Tenant had accused him of giving drugs to his cat; that the Tenant reported this concern to the SPCA; that the SPCA investigated the report; and that the SPCA was unable to substantiate that report.

The Tenant stated that she did not report this neighbour to the SPCA.

The Agent for the Landlord with the initials "R.C." stated that she previously worked with the Tenant as a community support worker; that she currently works for the Landlord; that the Tenant told her that the neighbour was giving illegal drugs to his cat; that the Tenant told her that she had reported the neighbour to the SPCA; and that she was subsequently informed that the SPCA did investigate the report.

The Agent for the Landlord with the initials "R.C." stated that the Tenant told her on numerous occasions in April, May, and June of 2013 that the Tenant had to bang on a neighbour's wall because she was being disturbed by the neighbour having sex. The Tenant denies banging on the walls or telling the witness that she banged on the walls.

The Agent for the Landlord with the initials "R.C." stated that she was present on several occasions when an agent for the Landlord told the Tenant not to disturb her neighbours. The Tenant stated that she never disturbs her neighbours and she never goes to their rental units.

The Agent for the Landlord with the initials "R.C." stated that in January or February of 2013 the Tenant told her that she had told another occupant of the residential complex that the occupant smelled. The Tenant denied the allegation.

The Agent for the Landlord with the initials "R.C." stated that since she has worked with the Tenant the police have accused her of making nuisance 911 calls and that the Tenant typically denied making the calls or claimed they were made for valid reasons.

The Agent for the Landlord with the initials "C.D." stated that an occupant of the residential complex reported that the Tenant informed his mother that he was using illegal substances and that the Tenant was cautioned about this incident. The Tenant denied this incident.

The Agent for the Landlord with the initials "C.D." stated that sometime last week he observed the Tenant go to another occupant's rental unit; that she told the occupant to be quiet; that she used profanity; that the other occupant became agitated and that an argument ensued; and that he intervened and separated the parties. The Tenant denied this incident.

The Landlord stated that in September there was a fire in the neighbourhood and that the police suspected the Tenant of starting the fire.

The Witness for the Landlord with the initials "K.L." stated that in September of 2013 she was working with the Tenant as a community support worker; that the police contacted her to advise her that the Tenant was a suspect in an arson; that the police informed her they had found gasoline on the Tenant's shoes; that the police informed her that they were not laying charges in the matter, although they believed the Tenant was responsible for the fire; and that the Tenant told her that if the police do find gas on her shoes it is because she recently walked through a gas spill.

The Advocate for the Tenant stated that the Tenant is not responsible for the fire; that the police told the Tenant they did not find gasoline on her shoes; and that the police have not charged the Tenant with arson.

The Tenant stated that she complained on several occasions to the Landlord about other occupants of the rental unit and that the Landlord does nothing about them. The Landlord stated that she has not received a complaint from the Tenant since July or August of 2012.

Analysis

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant or a person permitted on the property by the tenant significantly interferes with or unreasonable disturbs another occupant or the landlord of the residential property. At the hearing I advised the parties that I believed the Tenant has unreasonably disturbed other occupants of the residential complex and an agent for the Landlord. Although the Tenant has denied all of the allegations of disturbances, I find those denials self serving and unreliable. I find that the testimony of the witnesses, when considered collectively, is far more compelling than the Tenant's denials. Although the witnesses are reporting

different events, they collectively report a pattern of behaviour that, in my view, is unreasonable.

At the hearing I advised the parties that I was inclined to end the tenancy on the basis of the reported disturbances. Upon reviewing the evidence presented at the hearing I realized that the Landlord had not informed the Tenant that the tenancy was ending pursuant to section 47(1)(d)(i) of the *Act*. I specifically note that when the Landlord stated the reasons for ending the tenancy that were selected on the One Month Notice to End Tenancy that was served she did not state that one of the reasons for ending the tenancy was that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonable disturbed another occupant or the landlord of the residential property.

As the One Month Notice to End Tenancy did not inform the Tenant that the Landlord wished to end the tenancy because the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonable disturbed another occupant or the landlord of the residential property, I find that I am unable to end this tenancy on the basis of section 47(d)(i) of the *Act*. The Landlord retains the right to serve the Tenant with another One Month Notice to End Tenancy if the Landlord wishes to end the tenancy pursuant to section 47(1)(d)(i) of the *Act*.

I note that the Landlord did inform the Tenant that the Landlord wished to end the tenancy because the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant. With the exception of the allegation of arson, I note that none of the other disturbances can be considered "illegal" for the purposes of ending a tenancy and I cannot, therefore, rely on section 47(1)(e)(ii) of the *Act* to end the tenancy on the basis of the disturbances.

Section 47(1)(e) of the *Act* authorizes a landlord to end a tenancy if a tenant engages in illegal activity that has put the Landlord's property at significant risk; that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; or that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord. I find that the Landlord has submitted insufficient evidence to establish that the Tenant has engaged in illegal activity and I therefore cannot conclude that the Landlord has the right to end the tenancy pursuant to section 47(1)(e) of the *Act*.

In determining that there was insufficient evidence to conclude that the Tenant had engaged in illegal activity, I was heavily influenced by the absence of evidence from the police to show that the police had reasonable grounds to believe the Tenant had committed arson; by the undisputed evidence that the Tenant has not been charged with a criminal offence; and by the absence of evidence to corroborate the witness' testimony that the police told her gas was found on the Tenant's shoes or to refute the Advocate for the Tenant's testimony that the Tenant was told gas was not found on her shoes.

Conclusion

The Tenant's application to set aside the One Month Notice to End Tenancy is granted.

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: November 21, 2013

Residential Tenancy Branch

