



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HERMITA VILLA HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, OPR, OPC, MNR, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Both parties made submissions with respect to cancelling or upholding both the 10 Day Notice and the 1 Month Notice although all of the applicable dispute codes were not indicated on the applications filed. As I was satisfied both parties were prepared to deal with each Notice to End Tenancy during this hearing, I amended the applications to reflect all applicable dispute codes.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
Is the landlord entitled to an Order of Possession?
Is there any outstanding rent as of the hearing date?

Background and Evidence

The tenancy commenced on August 1, 2013 and the tenants are required to pay rent of \$780.00 on the 1st day of every month.

1 Month Notice to End Tenancy

On November 4, 2013 the tenants received a 1 Month Notice to End Tenancy for Cause with a stated effective date of December 4, 2013 (the 1 Month Notice). The 1 Month Notice indicates two reasons for ending the tenancy: that the

- Tenant or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord; and,

- 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.

Landlord's position

The landlord submitted that prior to the issuance of the 1 Month Notice the tenants, or their guests, have been unreasonably loud and disturbing to other occupants by way of loud late night/early morning partying (music, yelling, banging) on several occasions including: August 2, September 2, 6, 28 and the weekend of November 2 and 3, 2013.

In addition to loud noises, the tenants' guest was seen urinating off the balcony on September 2, 2013.

On September 6, 2013 the tenants' guest was heard yelling "wake the fuck up everyone!" at 6:39 a.m. In response to a complaint from another occupant, the manager approached the tenants when their guest made threatening remarks toward the manager. At that moment, the co-manager took a photograph of the tenants' guest. Later on the manager, the tenants and their guest had a discussion about appropriate conduct and it was mutually agreed that the tenants and their guest would keep their noise level down.

According to the landlord, the tenants violated the mutual agreement on September 28, 2013 when more complaints were received about late night partying and noise coming from the rental unit, to the extent another occupant called the police. The landlord gave the tenants another written notice about their noise level.

Then on the weekend of November 2 and 3, 2013 the tenants and their guests were again unreasonably noisy and the co-manager knocked on the tenants' door, saying she would proceed to have them evicted. On November 4, 2013 the manager issued the 1 Month Notice.

The landlord submitted that since issuing the 1 Month Notice the excessive noise levels and complaints have continued or become worse. The landlord seeks an immediate Order of Possession despite accepting rent for the month of January 2014. The landlord indicated he would refund a portion of January rent if the tenants were evicted immediately.

In support of the landlord's position the landlords provided copies of warning letters issued by the manager; the photograph of the tenant's guest, and, written complaints from three other occupants of the building.

Tenants' position

The tenants acknowledged that there was noise made on August 2, 2013 as they were moving in that day. The tenant also acknowledged that the guest that has been the subject of this dispute does have a loud voice and they have asked him to keep his voice down. The tenant acknowledged having a meeting in September that resulted in an mutual agreement but the tenant was of the position that their conduct since then does not warrant an eviction.

The tenants denied that the police attended their unit about excessive noise on September 28, 2013. The tenant acknowledged that they had guests over and there may have been some noise from cheering to the hockey and UFC games playing on the weekend of November 2 and 3, 2013 but submitted that their guests left by 11:00 p.m.

The tenants denied receiving all of the written notices submitted by the landlord.

Further, the tenants approached some of the other occupants of the building and the tenants claimed that the other occupants indicated they were not disturbed by noise coming from the tenants' unit.

Finally, the tenants submitted that on some of the dates the cited by the landlord, the tenants were either not home or were not partying.

10 Day Notice to End Tenancy

On December 1, 2013 the landlord prepared a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$780.00 was outstanding as of December 1, 2013 (the 10 Day Notice). Both parties were in agreement that all of the rent for December 2013 has since been paid as well as rent for January 2014.

The manager testified that after preparing the 10 Day notice, on December 1, 2013, he found a cheque for one-half of the monthly rent from income assistance on behalf of the female tenant. The manager initially testified that the 10 Day Notice was given to the tenants on December 9, 2013 and then he changed his testimony to say it was given to the tenants on December 2, 2013 as indicated on the Proof of Service submitted as evidence. The manger did not provide a reason why the 10 Day Notice was not amended to reflect the actual amount of outstanding rent. I also noted that the second page of the 10 Day Notice was not included in the landlord's evidence submission.

The tenant testified that income assistance sent her portion of the rent to the landlord on November 20, 2013 so the landlord should have had the cheque before December 1, 2013. The tenant submitted that attempts to pay the balance of the rent were made on

December 6, 7 and 8, 2013, in cash, at the landlord's residence but that the manager was not home and the tenants were unaware that the manager's spouse was a co-manager. When the manager returned home on December 9, 2013 the tenants were able to pay the balance of the rent. Then on December 10, 2013 the landlord served the tenants with the 10 Day Notice which they do not understand since the rent had been paid by then.

All of the tenants' submissions consisted of oral testimony. The tenants did not provide any documentary evidence or witness testimony to corroborate their position.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reasons indicated on the Notice. The burden of proof is based on the balance of probabilities.

With respect to the 10 Day Notice, I find the landlord has not satisfied me that a valid 10 Day Notice was issued and served upon the tenants. In particular, the issuance date is pre-mature and indicates an incorrect amount of unpaid rent. There was also a question as to whether the second page of the Notice was served since it was not included in the landlord's evidence package; and, there was conflicting evidence as to the date the Notice was served upon the tenants. Considering the above deficiencies and taking into consideration that rent has been paid, I do not end the tenancy for unpaid rent based upon the 10 Day Notice presented to me.

The 1 Month Notice includes two reasons for ending the tenancy for cause; however, I was not provided evidence to suggest the tenants have done anything illegal and I do not end the tenancy for illegal activity. Accordingly, I proceed to consider whether the tenancy should end for the remaining reason presented to me: that the tenants or persons permitted on the property by the tenants have significantly interfered with or unreasonably disturbed other occupants or the landlord.

All tenants are entitled to quiet enjoyment of their unit, including freedom from unreasonable disturbance. Excessive noise or repeated disturbances are a basis for finding a loss of quiet enjoyment. Where one tenant unreasonably disturbs other tenants, the landlord has an obligation to take action to stop the offending behaviour.

Upon review of the written complaints from three other tenants residing in the building, the landlord's written documentation of disturbing events, and the tenant's acknowledgement that some excessive noise was generated by them or their guests, I find there is sufficient evidence to satisfy me that the tenants or their guests have unreasonably disturbed other occupants of the building. I accept that the tenants were cautioned about disturbing others whether that be by verbal warnings and/or written warnings and that they agreed to conduct themselves accordingly. I am also satisfied by the evidence that the tenants breached their agreement on at least two subsequent occasions: September 28 and the weekend of November 2 and 3, 2013. Therefore, I uphold the 1 Month Notice.

As I have upheld the 1 Month Notice, I order this tenancy to be at an end effective at 1:00 p.m. on January 31, 2014. Provided to the landlord with this decision is an Order of Possession to serve upon the tenants.

As it was undisputed that there is no rent currently outstanding, I do not provide the landlord with a Monetary Order.

I make no award for recovery of the filing fee.

Conclusion

I have upheld the 1 Month Notice issued November 4, 2013. The landlord has been provided an Order of Possession effective at 1:00 p.m. on January 31, 2014 to serve upon the tenants.

The 10 Day notice was cancelled and no Monetary Order was issued since rent was paid.

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: January 21, 2014

Residential Tenancy Branch

