



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TWIN MANOR APTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with a tenant's request to cancel a 1 Month Notice to End Tenancy for Cause. 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.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is it necessary to issue orders to either party?

Background and Evidence

The tenancy commenced in June 1994 and the tenant is currently required to pay rent of \$890.00 on the 1st day of every month. The rental unit is a two bedroom apartment.

On November 25, 2013 the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective vacancy date of December 31, 2013 (the Notice). The Notice was slid under the door of the tenant's unit. The tenant found the Notice on November 27, 2013 and filed to dispute it within the time limit required under the Act.

The Notice indicates three reasons for ending the tenancy, which are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Below, I have summarized the parties' respective positions regarding the above reasons.

1. Repeated late payment of rent

It was undisputed that over the last three years the tenant had endured financially difficulties following an accident in which she was involved and was late paying rent on a number of occasions. When asked to provide at least three of the most recent late payments the landlord and tenant were in agreement that the tenant was late paying rent for the months of: February 2013; March 2013; July 2013 and November 2013. It was also undisputed that, currently, there is no outstanding rent.

The landlord acknowledged that there had been discussion between the parties regarding the tenant's ability to pay and that the landlord had accommodated the tenant's financial situation by accepting partial and late payments on several occasions but the landlord was of the understanding that when the tenant brought in roommates the situation would improve. However, when the tenant's roommates would move out late payment of rent resumed. The landlord no longer wishes to accommodate the tenant's partial and late payment of rent.

On November 1, 2013 the tenant paid rent of \$250.00 and gave the landlord a post dated cheque for the balance of \$640.00 dated November 9, 2013. The landlord issued a letter to the tenant on November 2, 2013 indicating that any rent paid after the 1st would have to be paid by way of cash. Also on that date the landlord issued a 10 Day Notice to End Tenancy or Unpaid Rent to the tenant. The tenant paid the balance of rent due, in cash, on November 5, 2013 and the 10 Day Notice was nullified by virtue of section 46 of the Act. The tenant paid rent in full for the months of December 2013 and January 2014.

2. Significant interference and unreasonable disturbance of other occupants and the landlord

The landlord asserted that:

- In October 2013 the tenant locked her roommate out of the rental unit. After banging on the door with no response, the roommate knocked on a neighbour's door in an effort to locate the building manager. The neighbour escorted the roommate to the manager.
- On October 28, 2013 the police were called to the rental unit to deal with a dispute between the tenant and the roommate. Lots of yelling was also heard by neighbours.

- The tenant would not answer the door or the phone when the roommate wished to retrieve the remainder of the roommate's possessions which resulted in the building manager intervening in an attempt to resolve the dispute.
- In December 2011 the police attended the rental unit to respond to a dispute between the tenant and her former roommate.
- In January 2013 the landlord was advised by a neighbour of the tenant that she had banged on the neighbour's wall and door because he was showering. When the landlord approached the tenant about the complaint the tenant reacted inappropriately, by making motions that the neighbour was a "cry-baby" for complaining to the landlord.
- The tenant is confrontational toward other tenants although specific instances were not provided.

The tenant provided the following responses:

- The tenant did not intentionally lock her roommate out when she engaged the deadbolt when she went in the shower. The tenant did not hear the roommate knocking on the door but had the roommate waited another few minutes there would have been no further issue.
- The tenant acknowledged that on October 28, 2013 there was an argument between her and her roommate and that the tenant called the police after the tenant was hit by the roommate's boyfriend.
- The tenant was not home when the roommate and/or building manager was trying to reach her with respect to the roommate retrieving her possessions.
- The landlord should have directed the roommate to deal directly with the tenant as opposed to becoming involved in the dispute. The tenant and her roommate have a hearing scheduled to resolve their monetary dispute.
- The tenant understands that she is responsible for conduct of her roommates and/or guests she brings onto the property. The roommate has since moved out of the rental unit and the tenant has no intention to bring in any more roommates in the future.
- The police attended the property in September 2011 due to her former roommate's mental instability and request for assistance. That roommate moved out more than two years ago.
- The tenant denied banging on her neighbour's wall but admitted that she knocked on his door to inform the neighbour that banging could be heard in her bedroom when he showered. The tenant believes it is appropriate to first attempt to deal with an issue with contacting the neighbour first.
- The tenant asserted that she does not have much interaction with her neighbours.

3. Breach of a material term

The landlord did not produce a copy of the tenancy agreement. The tenant indicated that she was uncertain as to the material term she has allegedly breached.

The landlord submitted that this reason was indicated on the Notice because the tenant has had roommates and did not submit information to the landlord about the roommate. Nor did the tenant provide the roommate with information about the landlord.

The landlord stated that the tenancy agreement does not limit the number of occupants that may reside in the rental unit but does prohibit subletting. The landlord acknowledged that the tenant has continued to reside in the rental unit during the time she had a roommate. The landlord also acknowledged that she aware that the tenant has had a variety of roommates over the past three years. The tenant did not dispute the aforementioned submissions.

Analysis

Where a landlord wishes to end a tenancy for cause, the landlord must serve the tenant with a 1 Month Notice to End Tenancy for Cause, in the approved form. Section 88 provides for acceptable methods of serving such a notice. Sliding documents under a door is not one of the acceptable methods of service. However, considering the tenant acknowledged finding it on November 27, 2013 and filed to dispute the Notice, I deem the tenant sufficiently served effective November 27, 2013 pursuant to the authority afforded me under section 71 of the Act. Further, rather than cancel this Notice due to insufficient service I continued to hear from the parties in an effort to avoid the landlord merely serving another Notice upon the tenant and having the parties in a dispute resolution proceeding months from now. The landlord is, however, cautioned that any document served upon a tenant must be served in a manner that complies with section 88 or 89 of the Act, as applicable.

Where a Notice to End Tenancy for Cause comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their burden.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each of the reasons indicated on the Notice.

1. Repeatedly late payment of rent

Repeated late payment of rent is a basis for ending a tenancy for cause. Residential Tenancy Policy Guidelines provide that three late payments is usually sufficient to find the tenant has been repeatedly late paying rent.

In this case, it was undisputed that the tenant was late paying the full amount of rent on at least three occasions during the past few years due to the tenant's financial difficulties. However, I find that this case is distinguishable because the landlord had indicated to the tenant that she would work with the tenant and did so by accommodating late payments on several occasions over a relatively long period of time. While the landlord is not obligated to continue to accommodate or tolerate late payments from a tenant, should the landlord wish to return to requiring full payment on the date rent is due, I find it reasonable that the landlord would put the tenant on notice that the late payments will no longer be tolerated before issuing an eviction notice for this reason. The landlord did not give the tenant such notice before issuing this Notice.

I also find it compelling that when the landlord notified the tenant that any payment received after the first of the month would have to be in cash, the tenant complied with the landlord's request. Therefore, I am confident that the tenant shall comply with her obligation to pay rent in full and on time regardless of her financial situation now that she understands the landlord will no longer tolerate late payment.

Considering the above-described circumstances, I do not end the tenancy for this reason at this time. However, pursuant to the authority afforded me under section 62 of the Act, I find it necessary and appropriate to ORDER the tenant to ensure full payment of rent is made by the 1st day of every month hereafter. Failure to comply with this order in the future may be grounds for the landlord to issue another Notice to End Tenancy.

2. Significant interference or unreasonable disturbance of other occupants or the landlord

Under the Act, a tenant is responsible for ensuring that the behaviour of persons they permit on the property do not significantly interfere with or unreasonably disturb other occupants or the landlord. It is important to note that the words "significantly" and "unreasonably" are purposefully and intentionally included in the legislation so that tenants are not evicted for occasional disturbance or normal activities that fall within the

range of reasonable. Therefore, the landlord must prove the disturbances of others were unreasonably disturbing or significantly interfering with that person's right to use and enjoy the property.

I heard that one neighbour was disturbed or inconvenienced by the tenant's roommate who knocked on her door to enquire about the location of the building manager. I find this one-time event insufficient to find the neighbour suffered significant interference or unreasonable disturbance.

I heard that another neighbour was confronted by the tenant when she was disturbed by his showering activities in the early morning hours. I find this one instance that occurred a year ago is insufficient to end the tenancy; however, I find it appropriate to caution the tenant that confrontational behaviour is unwelcome, inappropriate and not likely to be tolerated. I suggest that if the tenant has a significant issue that requires attention the tenant notify the landlord of the problem and allow the landlord to take sufficient and appropriate action to rectify the situation.

When the tenant's roommate approached the building manager about return of her possessions and/or security deposit, I find the manager it upon himself to become involved in a dispute that did not concern the landlord. Since the landlord does not have a tenancy relationship with the tenant's roommate, the landlord does not have any obligation to the roommate. Thus, the landlord should refuse to become involved in such civil matters and direct the roommate to deal with the tenant.

I find the two visits to the unit by the police more than two years apart to be insufficient to end the tenancy. In the most recent case, the tenant was apparently the victim of an assault and I find it certainly within her right to request police assistance in those circumstances.

Although the tenant claims she has no intention to have roommates in the future, I provide the following cautions to the tenant in the event she does have another occupant or roommate in the future.

The tenant is cautioned that permitting strangers to move into her apartment brings inherent risks as that person's propensity to cause a disturbance is unknown to the tenant. Accordingly, the tenant's choice to allow strangers to reside in her unit may put the tenancy in jeopardy if those persons repeatedly or unreasonably disturb other occupants or the landlord.

Considering the above, I do not end the tenancy for significant interference or unreasonable disturbance but the tenant is now considered fully aware of her obligations to ensure her guests and/or occupants do not disturb others unreasonably and that the tenant should report issues to the landlord rather than confronting another tenant.

3. Breach of a material term

In the absence of a copy of the tenancy agreement, and upon hearing from the landlord, I find the landlord failed to establish that the tenant violated a material term of the tenancy agreement by having a roommate. There is nothing that prohibits the tenant from having another occupant live with her in the rental unit. Since the tenant continued to reside in the rental unit while she had a roommate, I find this scenario is not that of a sublet. Therefore, I do not end the tenancy for breach of a material term.

In light of all of the above, I cancel the 1 Month Notice to End Tenancy for Cause with the effect that this tenancy continues at this time.

I order that both parties share in the cost of the filing fee paid for this application as I am satisfied the conduct of both parties, or the lack thereof, has necessitated the need for this dispute resolution proceeding. Since the filing fee was paid by the tenant, the tenant is authorized to deduct \$25.00 from a future month's rent payment in satisfaction of this order.

Conclusion

The 1 Month Notice to End Tenancy has been cancelled; however, I have issued orders and cautions to the tenant in this decision for future consideration.

The tenant may deduct \$25.00 from a future month's rent payment in order to recover one-half of the filing fee from the landlord.

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 24, 2014

Residential Tenancy Branch

