



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OP

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

If not, is the landlord entitled to an order of possession?

Background and Evidence

The parties agree the tenancy started November 15, 2013. The tenant is obligated to pay \$850.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$425.00.

The landlord gave evidence that he personally served the tenant with a Notice to End Tenancy for Cause (the "Notice") on January 30, 2014. The Notice specifies a move-out date of February 28, 2014 and lists the following reasons for the Notice:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The landlord provided the following evidence regarding the three specified causes for ending the tenancy.

The landlord's evidence is that guests arrive to visit the tenant in the middle of the night, and often are unable to buzz the tenant directly because they do not know her last name. For that reason, the guests buzz the landlord's suite waking him at 3 or 4 a.m. He said this happened at least weekly in December and into the month of January.

The landlord also gave evidence that the tenant loaned her keys to one of her guests, who was then arrested by the police who took the keys. It was some time before the police returned the keys. The landlord gave evidence that on another occasion the same guest attempted to run over a police officer on a stolen motorcycle, hid in the tenant's rental unit, and was later arrested there. His evidence is that police were all over the building for most of the night.

The tenant gave evidence that she lent her key to her guest so that he would not make noise by using the buzzer. Her evidence is that, at the time of the incident where her guest was arrested at the building, the guest had provided her rental unit address to his parole officer as his temporary residence. For that reason, she says, he was not "hiding" in her rental unit.

The landlord gave evidence that the tenant or her guests make an unreasonable amount of noise late at night. His evidence is that on one occasion the tenant who lives below the tenant in this application called him late at night to advise that he was being kept awake by the sound of power tools from the tenant's apartment. The landlord said he went to the rental unit and knocked on the door, but no one answered. The landlord said his surveillance camera showed that the tenant arrived home some time later that night. The landlord said other tenants told him they later saw the tenant and her guests removing a table saw and other tools from the building.

The tenant gave evidence that she was not aware of any noise coming from her rental unit after 10 p.m. when she was at home. Her evidence is that the power tools were traded and loaned among friends and were not stolen.

The landlord provided a copy of a letter from the tenant below the tenant in this application regarding various instances of noise from the tenant's rental unit during the month of February 2014. I am unable to consider evidence regarding events that took place after the Notice was served on January 30, 2014.

The landlord gave evidence that he had been advised by other tenants that the tenant's former residence was described on the TV news as a "crack house". His evidence is

that he did not judge the tenant based on that, but he was concerned that she gave her keys out to others and frequently had guests late at night.

The landlord gave evidence that another tenant has advised him she is moving out because she no longer feels safe in the building. He says the other tenant told him there are different people around the building since December and she no longer feels comfortable going to her car in the evening.

The landlord gave evidence that the tenant's guests arrive, unload things from vehicles, leave, and then come back. He has also observed them looking into cars parked in the parking lot.

The landlord said that on one occasion, one of the tenant's guests buzzed him at 3:30 a.m. asking to be let into the building, and he refused to let the individual in. He gave evidence that some of the tenant's guests whistle or yell up to the tenant on the fourth floor to gain entry to the building.

The tenant gave evidence that they always keep their patio door open, and her guests only call or whistle once to get their attention, then the tenant lets them in. Her evidence is that they have now reduced their guests to a minimum. They have told their friends not to come around and what the building rules are.

The landlord gave evidence that he has twice observed the tenant and her boyfriend being questioned by the police outside the building, and on one occasion the tenant's boyfriend was in handcuffs. The tenant's evidence is that she and her boyfriend have been harassed by the police, and no charges resulted from those incidents.

The landlord gave evidence that another tenant in the building initiated a petition asking that the tenant in this application be evicted. The petition is signed by occupants of about 18 rental units in a building of 32 units; it reads:

"We the tenants are fed up with the events that happen on a regular basis ever since the tenants moved into apt #[#] November 2013.

There is a steady stream of their visitors coming and going all hours of the day and night. They wander around the building trying to find a way in the building. They ask tenants to let them in or just follow them into the building. They call or whistle up to the 4th floor to get hold of the tenants to let them in day and night and they call the wrong people on the intercom waking them up. They have also been spotted around cars in the parking lot.

Since Christmas there has been a lot of police presence and a person that had tried to run down a police officer was hiding in their apartment and the police were around the building from approx 4pm till 8am making everyone in the building nervous. There is a wide mixture of tenants including men, women, children and elderly and we are all nervous when we leave our apartments. Something has to be done soon or some of us may have to look elsewhere to live!"

The tenant gave evidence that the petition was signed by a couple of people who just moved into the building in February. She said it was also signed by her next door neighbour, who was recently visited by the police due to a domestic dispute. The tenant's evidence is that she is on good terms with her neighbour on the other side and with the neighbour across the hall. She said the tenant across the hall told her directly when he had concerns and they resolved them.

The landlord gave evidence that some of his possessions had been stolen from a storage room adjacent to the parking lot. He said he spoke to the tenant's boyfriend who told him "I'll look into it for you." The landlord interpreted this to mean the tenant's boyfriend would check with his friends regarding whether any of them had stolen the items.

The tenant gave evidence that she was not aware of any items being stolen from the property. She said she asked her friends, and they would not steal from her place of residence.

The landlord gave evidence that when he speaks to the tenant about noise or her guests, things quiet down for a few days but then the problems restart.

The tenant gave evidence that she had not received any noise complaints, except for an occasion when the police came to her door and told her to be careful to not make a lot of noise while walking around. The tenant's evidence is that she did not know her guests were loud. Her evidence is that no one in the building has told her they feel threatened.

Analysis

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. Here, the landlord has specified three causes for ending the tenancy. If the landlord proves at least one of those causes, the Notice will not be canceled. However, if the landlord does not prove any of the specified causes, then I must cancel the Notice.

In this case, I find the landlord has proven on a balance of probabilities that the tenant or persons permitted on the property by the tenant have significantly interfered with and unreasonably disturbed other occupants and the landlord. Since I find the landlord has proven this cause for ending the tenancy, I do not need to consider the other specified causes.

I have made this finding based on the evidence provided by the landlord regarding noise and the frequency and hours of visits from the tenant's guests and the behaviour of those guests. I am also persuaded by the tenant petition which indicates that the landlord's concerns are widely shared by residents of the building.

I dismiss the tenant's application to cancel the Notice. According to Section 55(1), the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Conclusion

The tenant's application is dismissed. I grant the landlord an order of possession.

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: March 28, 2014

Residential Tenancy Branch

