



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Braeview Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee.

The named parties and the tenant's legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me and respond each to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenant established an entitlement to an order cancelling the landlord's Notice and to recover the filing fee?

Background and Evidence

This tenancy began on June 1, 2013, monthly rent is \$1999 and the tenant paid a security deposit of \$1000 at the beginning of the tenancy.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause, pursuant to section 47 of the Act. The Notice was dated January 14, 2014, listing an effective end of tenancy date of February 28, 2014. The landlord submitted without dispute that the Notice was delivered to the tenant on that date, by leaving it with the tenant.

The causes listed on the Notice alleged the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so, and has assigned or sublet the rental unit without the landlord's consent.

The landlord, KY, in support of the Notice, submitted that they have received several written complaints from other tenants of the multi-unit, multi-story residential property, including continued and multiple unreasonable noise disturbances late at night and early in the mornings caused or allowed by the tenant.

The landlord submitted that the behaviour of the tenant has caused the police to be called to the premises, and that the complaints by neighbours regarding the tenant were made almost immediately after the tenancy began.

The landlord submitted that between June 1, 2013 and January 14, 2014, the landlord received 11 written complaints of unreasonable noise and noise disturbances. The landlord further submitted that they received many other verbal complaints.

The landlord submitted that the tenant was issued several written warning letters, and that the final incidences which caused the issuance of the Notice centered around an incident on January 1, 2014, of unreasonable and continued noise coming from the tenant's rental unit, most likely a New Year's Eve party with alleged excessive alcohol use as the tenant was seen standing in front of the elevator while nude and from troubling communication with the tenant's then roommate/occupant.

The landlord submitted that the tenant has violated several terms of the tenancy agreement regarding unreasonable noise disturbances.

Landlord's agent, PB, the building manager, testified that he spoke with the tenant multiple times, in his investigations of the noise complaints, and that the tenant never disputed the complaints.

The landlords' relevant evidence included the tenancy agreement, the Notice, a letter from adjoining neighbours outlining the dates of their noise complaints, dated June 28, 2013, a letter dated June 28, 2013, a warning letter from the landlord to the tenant, dated June 28, 2013, from another set of neighbours complaining of the excessive noise and their rights to quiet enjoyment, a letter dated September 20, 2013, from the original complaining neighbours, regarding excessive late night noise causing sleep disturbances, an email from those neighbours with an updated noise complaint regarding the tenant, a further warning letter from the landlord to the tenant, dated October 7, 2013, which stated that a further complaint would result in being issued a 1 Month Notice, other email communication between complaining neighbours to the landlord, a letter from a separate tenant who shares a wall with the tenant, informing the landlord of the night four police officers mistakenly knocked on her door in response to a loud domestic disturbance, which was actually occurring in the tenant's rental unit, and email communication from the tenant's then roommate occupant, DC.

In response, the tenant submitted that there were only 5 noise complaints, not 11, and a follow-up.

The tenant submitted that there was another tenant listed on the tenancy agreement, TM, but that he stayed only 4 weeks prior to vacating. At that time the tenant obtained another roommate, DM, and informed landlord's agent, PB, of the same. According to the tenant, PB told the tenant not to worry about providing any details about the newest occupant in the rental unit.

The tenant submitted that DM moved out shortly after moving in, at which time DC moved into the rental unit as a roommate to share the rent.

The tenant submitted that DC was the source of the excessive noise disturbances, and that as he is no longer living in the rental unit, there are no further disturbances.

As to the incident involving being naked and the New Year's Eve party, the tenant explained that she was distraught over the death of a friend.

In his submissions, the tenant's legal counsel argued that provincial and federal law have defined significant interference and nuisance, and that the nature of the complaints lodged against the tenant does not rise to that level.

The legal counsel further argued all tenants' rights have to be balanced against each other's rights, and that all tenants are to be given consideration of their rights to be free from disturbances.

The legal counsel argued that there have been only two letters from the landlord in 9 months and that the source of the problem, DC, has now been removed from the rental unit.

The tenant's relevant documentary evidence included a binder containing a curriculum vitae, a reference letter from a previous landlord, the Notice, the written tenancy agreement, reference letters from other tenants in the residential property and other associates of the tenant, affidavits from the first two co-tenants or roommates of the tenant, a letter from a lawyer demanding that DC vacate the rental unit due to endangering the tenant's tenancy, text message communication, a photo of illegal drug paraphernalia allegedly owned by DC, and a past dispute resolution Decision.

Analysis

Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid and had merit at the time it was issued.

In this instance, the burden of proof is on the landlord to prove the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so, and has assigned or sublet the rental unit without the landlord's consent.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to prove at least one of the causes listed on the Notice.

Section 47 of the Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant, or a person permitted on the property by the tenant, has significantly interfered with or unreasonably disturbed another occupant.

I find that other occupants lose their quiet enjoyment when subjected to constant fighting, yelling and police presence and that the landlord has an obligation to protect the other tenants' right to quiet enjoyment under section 28 of the Act. Although the

tenant took the position she was not the instigator or the source of the noise disturbances, the Act provides and I therefore find that the tenant is responsible for the behaviour of persons she permits on the property.

Based on the preponderance of evidence presented to me, I find the landlord has shown that the tenant or other persons the tenant has permitted on the property have caused significant interference and unreasonable disturbance of other occupants in the residential property and that these disturbances began almost immediately upon the tenancy beginning through the issuance of the Notice. I also find that the instance when the tenant was seen standing nude in the common hallway and in front of the elevator, which she did not deny, would cause disturbance to a reasonable person.

I find the landlord acted reasonably and properly to ensure that the tenant was aware that the continued behaviour of the tenant or other persons she allowed in her rental unit would result in the landlord seeking to end the tenancy; despite this, the landlord submitted sufficient evidence that the behaviour continued.

Considering the totality of the evidence, I find that the landlord has proven that the tenant has significantly interfered with and unreasonably disturbed the landlord and/or other occupants of the residential property and I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice valid and enforceable.

As I have found that the landlord has proven at least the one ground for ending the tenancy, it was not necessary to make a finding on the other two grounds.

As I have dismissed the tenant's application, I decline to award her recovery of the filing fee.

Under Section 55 of the Act, if a tenant's application to cancel a Notice has been dismissed, I may grant the landlord an order of possession; however, the landlord at the hearing did not make an oral request for an order of possession. I therefore have not granted an order of possession in favour of the landlord.

The landlord is at liberty to make their own application for an order of possession should the tenant fail to vacate the rental unit immediately; the tenant is advised that if it becomes necessary for the landlord to make their own application, the tenant would be subject to those costs incurred by the landlord.

Conclusion

For the reasons stated above, the tenant's application is dismissed, without leave to reapply.

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 17, 2014

Residential Tenancy Branch

