



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 as a result of the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order canceling a Notice to End Tenancy given for cause.

The Landlord, M.S., as well as the building manager, A.M. appeared on behalf of the Landlord. The Tenants appeared on their own behalf.

The hearing process was explained and the participants were asked if they had any questions. All participants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Notice to End Tenancy given for cause be cancelled?

Background and Evidence

M.S. testified as to the details of the tenancy as follows. In July of 2014, he bought the building in which the rental unit is located. He stated that the building contains 20 units sharing a common kitchen and bathrooms with a variety of "assisted tenancies" within the unit. The Tenants occupied the rental unit prior to his purchase of the building.

As to the reasons for issuing the Notice to End Tenancy for Cause, M.S. testified as follows:

- He was in an adjacent building when he noticed bicycles being brought into the building. He could not state who brought the bicycles, only that he believed they were tenants.
- A SWAT team arrived and one of the two Tenants (he was not sure which one) was taken away and arrested. He was not able to provide any further details and conceded that he did not in fact witness the tenant being arrested, and that he was instead relying on information he received from A.M.
- M.S. stated that he was not alleging there was a “criminal element”, but that having a SWAT team and police presence arresting people affected the quiet enjoyment of the other occupants of the building.

A.M. testified as to the details of the tenancy as follows. She assisted the previous owner by having all tenants enter into written tenancy agreements in June of 2014. She began working with M.S. when he purchased the building. The monthly rent paid by the Tenants is \$750.00 for a month to month tenancy.

She signed the 1 Month Notice to End Tenancy. Her husband, V.M., personally served the tenant, T.K.; she was not sure where service occurred but believed it was at the rental unit. As to the reasons for issuing the Notice to End Tenancy for Cause, A.M. testified as follows:

- She was with M.S. in the adjacent building when another renter came to her and told her that the police were at the rental building.
- She could not remember the date this occurred only that it was a few days before August 15, 2014 and was either a Tuesday or a Wednesday.
- When she attended the rental building she found two police officers reading the serial number on a bicycle. She overheard one officer say that the bicycle had been stolen.
- She initially described the police presence as a SWAT team. When asked to clarify, she conceded that to describe the police present as a SWAT team was an exaggeration and that in fact two police SUV's were in attendance with a total of four plain clothes officers.

- The Tenant, A.K. was arrested. A.M. did not speak to the police about the reasons for the arrest and believed that they would not tell her for privacy reasons.
- She did not have any discussions with the police regarding the Tenants after the above described incident.
- There have been two other occasions where the police have attended the Tenants' room, but no arrests have been made. When asked to indicate the dates of these other two occasions, A.M. stated that one occurred in July, and the other was towards the beginning of August. She could not be more specific.

The Tenant submitted that the Notice was given as the new owners wish to evict them as he feels the new Landlord has “been against [them] from day 1”.

The Tenant, A.K. testified that he was arrested as described by A.M., but the reason for the arrest had nothing to do with a bike, or the rental unit. Rather, he stated that he was on a tight budget and he “grabbed some change out of a car, which happened to be a ‘bait car’”. He said he was really sorry that he did it. He further testified that he has never stolen a bike.

Analysis

The relevant portion of Section 47 of the Act provides as follows:

- (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies
 - ...
 - (e) the tenant or person permitted on the residential property by the tenant has engaged in illegal activity that
 - ...
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The Tenant applied, pursuant to section 47(4) of the Act for an order setting aside the notice to end the tenancy.

Residential Tenancy Policy Guideline 32—Illegal Activities provides that the party alleging the illegal activity has the burden of proving that the activity was illegal. In

considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlords' property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

Policy Guideline 32 further provides that, "[t]he illegal activity must have some effect on the tenancy... A tenant may have committed a serious crime such as robbery or physical assault; however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property".

I accept A.K.'s evidence with respect to the reason for his arrest and find A.K.'s arrest to be unrelated to the tenancy. In making this finding, I further find that the Landlord has failed to establish that the Tenant has engaged in illegal activity which adversely affects or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property as required by section 47(1). While A.K.'s arrest was no doubt unsettling for some tenants, I do not find it sufficient to justify a termination of the tenancy. Accordingly, I find that the Notice is not valid.

Conclusion

The Landlord has failed to establish cause for ending the tenancy. Therefore I order that the Notice is set aside.

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: September 25, 2014

Residential Tenancy Branch

