



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bon Terra Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; two agents and two witnesses for the landlord. I note the landlord had provided contact information for another witness, however, after attempting to call the witness with no success I sought assistance from the operator who reported that the witness's phone was turned off and as such I could not call this witness.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on February 25, 2010 for a 1 year fixed term tenancy beginning on March 1, 2010 for a monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid. There is no stipulation in the tenancy agreement that the tenant must vacate the unit at the end of the fixed term;
- A copy of the first page of a 1 Month Notice to End Tenancy for Cause issued on June 24, 2014 with an effective vacancy date of July 31, 2014. The parties agreed during the hearing that the second page of the Notice cites the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord submits that since the start of the tenancy the tenant's behaviour has been disruptive. The landlord has submitted the following additional documentary evidence:

- A copy of a letter dated June 24, 2014 indicating the day before the tenant had caused a disturbance when interacting with staff and an exterminator. The letter states the tenant has been warned before about "frequent complaints" and the landlord has attached the 1 Month Notice to End Tenancy for Cause;
- A letter dated February 28, 2014 that the property manager does not want to meet with the tenant and that any correspondence from the tenant should go through the tenant's lawyer. The letter goes on to say that since the tenant is unhappy with his rental situation and so "the property manager will be working on evicting you from the property";
- A "Breach Letter" dated December 27, 2013 stating "we have received several complaints about excessive noise coming from your suite". The letter goes on to say that any further breaches will result in a 1 Month Notice to End Tenancy;
- A "Breach Letter" dated April 26, 2010 that states "Conduct....Very loud talking and thumping, this is your second warning if this behaviour continues I have no choice but to serve eviction....";
- A letter of complaint dated June 7, 2010 from a neighbouring tenant complaining about stamping and falling on the floor and opening and closing windows at all hours.

The landlord's first witness was a cleaner in the building who states that the tenant seems nice to her but that he sometimes appears to be "not all there". She recounted that while the fire alarm system was being tested in February 2014 the tenant started freaking out.

The landlord's second witness was a security guard for the property and is also an occupant of a rental unit on the same floor as the tenant. This witness testified that on about 10 occasions over the past year he has had to go to the tenant about noise complaints that involved drinking; screaming and yelling; and bashing of doors. He states that 3 or 4 times these complaints occurred after 10:00 p.m.

This witness also testified that the tenant one day was raging through the hallway and causing quite a commotion. The tenant acknowledged this was in regard to the failure of the fire doors in the hallway.

The landlord submits that any disturbances after 10:00 p.m. warrant the issuance of a breach letter. I note the landlord has provided no documented complaints from other occupants in the residential property.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

While I am satisfied that landlord has established that the tenant may have disturbed other occupants or the landlord, I find the landlord has failed to establish that they have provided sufficient warnings to the tenant that his actions could lead to ending the tenancy, should he fail to change his behaviour.

I note for example that one of the breach letters was issued in April 2010 and there is no other breach letter or warning letter of any problems with the tenant until November 2013. There is one letter of complaint submitted dated June 7, 2010 and nothing else until November 2013.

In November 2013 an internal email from a staff person to the property manager the staff person indicates the tenant has “been causing a lot of disturbance. He brings in a lot of people from outside into his suite and the noise can be heard even in the hallways. All the neighbours have complained to Ray about the disturbance”. The landlord issued a breach letter on December 27, 2013 that appears to be related to this email.

The landlord appears to have two concerns related to this tenancy: first that the tenant treats staff poorly and secondly that the tenant has caused disturbances to other occupants as a result of noise in and out of his rental unit but on the property.

I find that of the only documented complaint against the tenant by other occupants relates to an event in 2010 and no other are noted until November 2013 the events and warning of 2010 are not relevant. I also note that even though there is an internal email (November 2013) that there were complaints from “all the neighbours” the landlord has not provided one documented complaint from anyone else.

I also find that while the tenant may have been warned about his behaviour has it relates to interactions with staff there is no recent record submitted into evidence of the landlord warning the tenant that he has been causing disturbances related to having guests over or noise complaints after 10:00 p.m.

For the above reasons, I find the landlord has failed to establish sufficient cause to end the tenancy at this time. However, I note that as a result of this proceeding the tenant should consider himself sufficiently warned that any future behaviour that includes causing disturbances to staff in the operation of the residential property or any disturbances to other occupants resulting from loud noises and other disturbances in his

rental unit may result in the landlord issuing a new 1 Month Notice to End Tenancy for Cause.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on June 24, 2014 to be cancelled and the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** for the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment pursuant to Section 72(2)(a).

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 8, 2014

Residential Tenancy Branch

