



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with a tenant's application 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.

The tenant acknowledged receipt of the landlord's evidence at least 7 days prior to the scheduled hearing but indicated he had not had an opportunity to gather evidence in response. Upon further inquiry, the tenant stated that if permitted more time to gather evidence he would obtain statements from former tenants of the residential property. When asked as to the progress he had made in the past 7 days the tenant stated that he does know the whereabouts of the former tenants. I informed the parties that I would proceed to hear the dispute and should statements of former tenants likely affect the outcome of this decision I would consider an adjournment. After hearing from the parties it was apparent that the conduct of the tenant, and his guests, in recent months and currently is the issue at hand and I was not swayed that statements of former tenants would have bearing on the outcome of this decision. Therefore, the hearing was not adjourned to permit the tenant to gather evidence from former tenants and I have made this decision based upon the evidence submitted by the parties prior to the hearing date and verbal testimony of the parties during the hearing.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy commenced November 15, 2012. The tenancy agreement provides that the monthly rent is due on the last day of every month although the parties agreed that it is their practice for rent to be paid on the 1st day of the month. The rental unit is an apartment style unit located in a multiple unit building with exterior entry doors that are accessed by common exterior stairs and walkways.

The landlord issued a 1 Month Notice to End Tenancy for Cause on July 31, 2014 (the Notice). The landlord stated that it was served in person on July 31, 2014. The tenant stated that he found the Notice taped to his door but he was uncertain as to the date he received it; however, in completing the Application for Dispute Resolution the tenant indicated that he received the Notice on July 31, 2014 and I accept that as being the date the tenant was served with the Notice. In any event, I was satisfied the tenant filed to dispute the Notice within the time limit permitted for doing so.

The 1 Month Notice that is the subject of this dispute provides for the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The landlord provided the following submissions as to the reasons the 1 Month Notice was issued to the tenant:

1. The tenant has been given several verbal warnings with respect to smoking in the unit and disruptive behaviour of his guests.
2. The tenant associates with drunk people who are often heard fighting, using foul language and slamming doors.
3. The tenant sits on the common steps drinking alcohol and other tenants have to walk around him to get to their units.
4. The tenant's guests speed through the common parking lot intoxicated.
5. The tenant has had a dog in the unit, the dog has been heard barking and the dog attempted to bite the maintenance man; although, the dog has not been seen recently.
6. Other tenants have informed the landlord that if they will be ending their tenancy if the tenant is permitted to stay.

The landlord testified that she, herself, has seen the drunkenness of the tenant and his guests and has talked to the tenant about her concerns. In response, he assures her that it will not happen again but the situation repeats itself. While the landlord appreciates the tenant has always paid his rent on time, and that the landlord will likely suffer losses due to an eviction, the landlord explained that she has to take action to protect the rights of her other tenants.

The landlord provided two written statements of other tenants in the building. The authors of the statements raise the following concerns:

1. The smell of smoke coming from the tenant's unit and an ashtray full of cigarette butts outside of his entry door;
2. The tenant and his guest sitting on the common stairs smoking and drinking beer and vodka starting as early as 10:00 a.m.
3. Empty beer cans and vodka bottles left sitting on the common stairs.
4. Yelling, swearing and fighting by the tenant and/or his guests up to 1:00 a.m. in the morning.
5. A woman staying with the tenant for weeks at a time was heard yelling and banging on the tenant's door for 15-20 minutes trying to gain access to the rental unit. Eventually, her clothes were thrown out of the tenant's apartment and left on the common stairs.
6. A dog in the tenant's unit that barks.

In response to the landlord's submissions the tenant provided the following:

1. The tenant denied ever meeting the landlord and denied receiving any warnings from her; although, the maintenance man has talked to him about his guests being required to smoke outside.
2. The tenant does not smoke and his rental unit smelled of smoke before he moved in.
3. The tenant is "not a drinker" and the tenant's guests do not drink. One of his friends does walk with a stagger but that is associated to ankle problems.
4. A couple of his friends are hard of hearing so they talk loudly.
5. The tenant does sit on the common stairs but he is only drinking tea.
6. There was an occasion where there were empty cans and bottles next to him on the stairs but those empties were given to him by another occupant who was going to throw them in the garbage.
7. The woman referred to by the complainants has since died.
8. Many of the noise disturbances are originating from the younger man and his guests that are in the rental unit next door to him.
9. The tenant does not own a dog; although, he acknowledged that on occasion a dog living on a neighbouring property has run into his unit.

The tenant objected to the inclusion of the written statements provided by the landlord on the basis the complainants' names or unit numbers were not provided. However, during the hearing the tenant indicated he knew the identity of the complainants as he stated that he had helped both of them on previous occasions. The tenant stated that he believed the complainants were the women living beside him and above him and he confirmed that he could think of no reason why they would make false allegations against him.

The tenant explained that he picks up cigarette butts he finds on the common property and stores them in the ashtray located by his front door.

When challenged about drinking, the tenant changed his testimony to concede that he is a "social drinker".

The tenant attempted to assure the landlord that disturbing behaviour would not recur and requested that his tenancy may continue.

The landlord responded by stating that she was not confident that the tenant's conduct would improve given his denial and blaming of others. The landlord pointed out that she has not received any complaints about the younger man living next door to the tenant. The landlord also pointed out that she has received two more complaints about the tenant or his guests since the 1 Month Notice was issued. The landlord testified that on September 28, 2014 the landlord received complaints of fighting in the parking lot by the tenant's drunken guests and on October 10, 2014 she received another complaint about loud cursing and arguing in the tenant's unit that last approximately 4 hours.

With respect to the events of September 28, 2014 the tenant stated he was unaware of any fighting in the parking lot. With respect to the events of October 10, 2014 the tenant acknowledged that he had a guest over that day and that his guest was angry and loud so he asked him to leave.

In recognition that the tenant paid rent for October 2014 the landlord requested an Order of Possession effective October 31, 2014 and may afford the tenant some flexibility beyond that date.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where there are multiple reasons indicated on a Notice to End Tenancy, the landlord need only prove one reason in order to end the tenancy.

In this case, I find I was not provided sufficient evidence to conclude the tenant has engaged in illegal activities on the property and I do not consider that reason any further.

Upon consideration of everything presented to me, I find the issue of most significance is the allegation that other tenants are suffering a loss of quiet enjoyment due to the conduct of the tenant and the persons he invites or permits on the property.

A landlord has a duty to protect a tenant's right to quiet enjoyment. Quiet enjoyment includes freedom from unreasonable disturbance in the rental unit and freedom to use the common areas without significant interference. Unreasonable disturbance may include frequent or ongoing disturbances or a single very significant disturbance. Where a landlord has multiple

rental units on a property, a landlord is expected to take action if one tenant, or the tenant's guests, has unreasonably disturbed or significantly interfered with another tenant's right to quiet enjoyment. Depending on the circumstances, that action may include ending the tenancy of the offending tenant.

Upon hearing from both parties, I found the landlord's consistent and straight forward testimony to be credible and in my view this landlord has no ulterior motive to end this tenancy. In comparison, I found the tenant's almost complete denial and blaming of others to be much less compelling, especially considering that I found some of his statements to be very unlikely and other statements were qualified when challenged. For example: I find it highly unlikely that a non-smoker would collect cigarette butts on the grounds of the common property and then store them in an ashtray outside his entry door. I also noted that the tenant bluntly stated "I'm not a drinker" initially, which would imply a person that does not drink at all; however, when this submission was challenged the tenant qualified the statement to mean he is "a social drinker".

Based upon the landlord's credible testimony and the consistent content of the letters written by other tenants, I find I prefer the landlord's version of events over those described by the tenant. I am left with little doubt that most of the disturbances that have taken place in the rental unit and common areas are fuelled by alcohol and/or drug use by the tenant and/or his guests and that the other tenants living at the property are frequently disturbed by the sounds of the intoxicated tenant and/or his guests yelling, arguing, swearing, banging and slamming doors in the rental unit and/or on the common property.

In light of the above, I am satisfied the tenant, or a person permitted on the property by the tenant, has unreasonably disturbed or significantly interfered with other occupants as indicated on the Notice to End Tenancy served upon the tenant.

The Act does not require that a landlord give a tenant written warning where they are unreasonably disturbing or significantly interfering with other tenants; however, written warnings are effective if the offending tenant is unaware that their conduct is disturbing others and the offending activity can then be corrected. In this case, there were no written warnings issued, but I am satisfied by the landlord's credible testimony that verbal warnings were given to the tenant, even if he does not remember them. Despite the lack of a written warning letter, I am satisfied that a written warning would not have changed the tenant's conduct as the tenant admitted that further disturbance occurred after he received the 1 Month Notice, on October 10, 2014 when his guest was so loud and angry that he asked him to leave. Unfortunately, the other tenants living on the property had to endure several hours of disturbance before the tenant took action to remove his guest. Therefore, I have rejected his appeal for another chance and I dismiss his request to cancel the 1 Month Notice with the effect that this tenancy is at an end.

I grant the landlord's request for an Order of Possession under section 55 of the Act which provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

The landlord is provided an Order of Possession that is effective at 1:00 p.m. on October 31, 2014, as requested.

Conclusion

The tenant's request to cancel the 1 Month Notice has been dismissed. The landlord has been granted an Order of Possession effective at 1:00 p.m. on October 31, 2014.

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: October 17, 2014

Residential Tenancy Branch

