



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel the One Month Notice to End Tenancy for Cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and other issues.

The tenant, an agent for the tenant, an advocate for the tenant, the landlord and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's application to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining sections of the tenant's claim at this hearing.

The landlord advised me there was an error in the spelling of the landlord's first name. The parties did not raise any objections to the error being corrected and this has now been amended.

Issue(s) to be Decided

Is the tenant entitled to have the Notice to End Tenancy cancelled?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2014. Rent for this unit is \$650.00 per month due on the first of each month.

The landlord's agent testified that the tenant was served a One Month Notice to End Tenancy (the Notice) by the landlord in person on July 29, 2014; however, the landlord had not correctly filled in the Notice so a second Notice with the correct details was served upon the tenant on September 10, 2014 by posting it to the tenant's door.

The landlord's agent testified that the second Notice has an effective date of August 31, 2014 and gave the following reasons to end the tenancy:

- 1) *The tenant has allowed an unreasonable number of occupants in the unit*
- 2) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

The landlord's agent testified that the tenant has allowed an unreasonable number of occupants in the unit throughout the summer. The tenancy agreement states that the unit is for the two named tenants on the agreement and one additional roommate is allowed with the approval of the landlord. The male tenant named on the agreement moved out after a few weeks and the

landlord believes that the tenant has allowed other occupants to live in the unit as there has been many different people coming and going over the summer months.

The landlord's agent testified that the extra occupants and guests of the tenant have created lots of noise with extra people and vehicles. The tenant has also had noisy parties with loud music and talking which has significantly disturbed the landlord and other tenants living close by. The landlord testified that he lives about 100 yards from the tenant's unit and has been disturbed by people talking loudly and with loud music often late at night. The landlord testified that the tenant is only entitled to park two vehicles and there is one guest parking space.

The landlord's agent testified that the tenant and her guests have been smoking outside the unit in violation of the tenancy agreement. This smoke has caused problems for none smoking neighbors of the tenant and this has seriously jeopardized the health or safety or a lawful right or interest of the landlord and other tenants. The landlord testified that he has seen the tenant and her guests smoking and when the landlord has gone over to the tenant's unit to warn the tenant about the noise and smoking the tenant has been rude to the landlord. The tenant told the landlord that the tenant guests are family members and the tenant is entitled to have family at her unit for barbeques.

The landlord testified that he has only given the tenant verbal warnings after receiving complaints from other tenants about noise and smoking. The landlord's agent referred to the tenancy agreement in which it states that this is a none smoking unit and testified that tenants are not permitted to smoke anywhere on the property.

The landlord's agent orally requests an Order of Possession at the hearing to be effective one week after service.

The tenant disputed the landlord's claims. The tenant testified that she only has two vehicles and the landlord had told the tenant that guests can park in any of the 12 guest parking spaces by the fruit stand. The tenant testified that she has not allowed any additional occupants to reside in the unit and if members of her family stay it is never for more than two weeks. The tenant testified that she has a large family and has only had one birthday party, an Easter party and one dinner party at the unit since she moved in in April, 2014.

The tenant testified that the landlord came and requested the tenant to move her outside table and has not designated a smoking area. The tenant and her guests smoke by the hedge so any smoke does not affect neighboring tenants. The tenant testified that there are five units and out of these five units, three units have smokers living in them and these tenants all smoke outside their units. The tenancy agreement addendum states that smoking is not permitted inside the unit and does not state that the tenant cannot smoke outside the unit.

The tenant disputed the landlord's claims that she or her guests have disturbed other tenants or the landlord. The tenant testified that during the Easter party the tenant and her guests were laughing loudly so the tenant asked her closest neighbor if they were disturbing her and that neighbor said that she could not even hear them. The tenant testified that the landlord has not provided any warning letters and the tenant has not breached the *Act* or tenancy agreement. When the landlord came over it was the landlord who was very rude to the tenant and it was the landlord who disturbed the tenant and her guests. The tenant testified that due to the landlords persistent action the tenant has not stayed at the unit for the last three months but does not intend to move out.

The landlord's agent asks the tenant who is living at the unit now if the tenant is not there. The tenant responded that she does still live there but is not staying there presently and her daughter is coming in and out and stays there for a few days to support the tenant. The tenant testified that she cannot have guests stay over when she is there as there is only one bed in the unit. The landlord's agent asked the tenant why the tenant has not moved out if she has not been there for three months and who is the man and woman seen constantly at the unit. The tenant's agent responded and testified that she is the woman seen at the unit and the man is her boyfriend who accompanies her to the unit when she is caretaking the unit for her mother. The tenant's agent testified that she has never stayed at the unit for more than a week and a half as she lives elsewhere with her boyfriend and only comes to the unit to help her mother out and to take care of her mother.

The tenant asked the landlord where her guests are supposed to park when they visit. The landlord's agent responded that there is one guest stall by the vegetable stand. The tenant's agent asked the landlord where they are supposed to smoke. The landlord's agent responded

that there is no smoking anywhere on the property as the tenants who do not smoke complain that smoke goes into their units. If the tenant or her guests need to smoke they should do it in the carport or by the vegetable stand.

The tenant testified that the tenancy agreement also states that there are no pets allowed yet the landlord has allowed some tenants to have a pet. Some other tenants are also allowed to smoke outside their door so why is the landlord making this tenant go over 300 yards away to smoke when they already smoke 15 feet away from other tenant's units and smoke on the other side of a hedge from the non-smoking tenants units.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. I have considered the evidence before me and find the landlord has insufficient corroborating evidence to support his claims that the tenant has allowed additional occupants in the rental unit. A tenant is entitled to have guests visit and stay at the unit. Generally speaking guests should not stay for longer than two weeks without permission in writing from the landlord before a landlord can reasonably deem them to be occupants rather than guests. The landlord has insufficient evidence to show that the tenant has significantly disturbed another occupant or the landlord or that the tenant has seriously jeopardized the health, safety or lawful right of the landlord or another occupant. If the landlord has several tenants residing in close proximity a landlord cannot enforce rules against one tenant if the other tenants are allowed to break the same rules. Furthermore I find the term of the addendum to the tenancy agreement concerning smoking to read 'no smoking in the unit'. It does not mention that the tenant is not allowed to smoke outside the unit. When it is one person's word against that of the other the burden of proof is not met.

Therefore, in the absence of any corroborating evidence to meet the burden of proof, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated, July 29, 2014 is cancelled and the tenancy will continue.

The unheard portion of the tenant's application is dismissed with 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: October 06, 2014

Residential Tenancy Branch

