



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Pemberton Holmes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution. The Application for Dispute Resolution was filed on December 07, 2014.

The Tenant stated that sometime around Christmas he left the Application for Dispute Resolution, the Notice of Hearing, and the document in the Landlord's evidence package labelled A6 in the Landlord's mail box. The Agent for the Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

On January 05, 2015 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were posted on the door of the rental unit on January 02, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct names of the Applicant and Respondent.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that the Tenant rents one rental unit, which consists of cabin 6 and 7 that have been renovated to become one unit.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant on November 29, 2014, which declared that the Tenant must vacate the rental unit by December 31, 2014. The reasons stated for the Notice to End Tenancy were that the Tenant has allowed an unreasonable number of occupants in the unit and the Tenant or a person permitted on the

property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

In support of the allegation that the Tenant has allowed an unreasonable number of occupants in the rental unit, the Agent for the Landlord stated that in July and August of 2014 she observed three females at the rental unit on a regular basis. She stated that she observed the females doing laundry on several occasions before the facilities were shut down in August of 2014, so she assumed they were living in the rental unit.

The Agent for the Landlord stated that two of the females left in August of 2014 and she does not know when the remaining female left. She stated that she discussed these individuals with the Tenant and he told her they were not living there.

The Tenant stated that none of the three females were living with him, although he did have three females stay with him overnight on occasion during the summer. He stated that one of the females was his girlfriend and she periodically stayed with him, although she has her own accommodations within the community. He stated that this individual is no longer his girlfriend and she has not stayed with him in the past two months.

The Landlord has submitted two letters from a former occupant of the residential complex, dated July 08, 2014 and July 30, 2014, in which the occupant declares that there are at least eight people living in the rental unit, one of whom is the Tenant's girlfriend. The Landlord submitted a third letter from this occupant, dated October 04, 2014, in which the occupant declares that there are at least four people living in the rental unit.

In support of the allegation that the Tenant has allowed an unreasonable number of occupants in the rental unit, the Agent for the Landlord stated that she has personally seen numerous visitors come and go from the rental unit.

The Agent for the Landlord argued that the Tenant should not have anyone staying with him as these are small units intended for occupation by only one person. She stated that none of the cabins have more than one person residing in the unit. She stated that the septic system will not accommodate more than one person in each unit.

The Tenant stated that he has known at least two couples who have jointly resided in these cabins since his tenancy. He argued that since he has two units there should be no problem with overnight guests.

The Tenant stated that he currently has nobody staying with him. The Agent for the Landlord stated that she does not know if anyone is currently living with the Tenant.

The Tenant does not dispute that he has a large number of visitors but he denies ever having more than five guests in his rental unit.

In support of the allegation that 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 contends that the Tenant's girlfriend assaulted another occupant of the residential complex. The occupant who was allegedly assaulted makes reference to a "personal attack" in her letter dated July 08, 2014, however she provides no details of the incident.

The Agent for the Landlord was unable to provide any additional details regarding the alleged assault. She stated that she did not discuss the allegation with the Tenant. The Tenant stated that he has no knowledge of this alleged assault.

In support of the allegation that 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 Agent for the

Landlord stated that the occupant who wrote the documents dated July 08, 2014, July 30, 2014, and October 04, 2014, has repeatedly informed her that she has been disturbed by the Tenant and his guests. The occupant's concerns about this Tenant and several other issues are outlined in those documents. The Agent for the Landlord stated that this occupant vacated the rental unit at the end of October of 2014.

The Tenant stated that the occupant that wrote those documents does not like him but he has no problems with anyone else living in the residential complex.

In support of the allegation that 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 Agent for the Landlord stated that the Tenant is currently repairing two vehicles on the residential property and that he parks them in the driveway in a manner that prevents other occupants from properly accessing/exiting the property.

The Tenant stated that he has not been repairing any vehicles on the property for at least six months; that he has two licensed vehicles on the residential property; that they are both parked in his designated parking spaces; and that they do not restrict traffic flow in the residential complex.

Analysis

Section 47 (1)(c) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if there are an unreasonable number of occupants in the rental unit. The Landlord bears the burden of establishing that it has grounds to end the tenancy on this basis.

I find that the Landlord has submitted no evidence, such as photographs, to corroborate the Landlord's submission that the units are too small to accommodate two occupants or that shows there is something in writing the limits the number of occupants to only one person. Similarly, the Landlord has submitted no evidence to corroborate the Landlord's submission that the septic system is incapable of accommodating two people in each unit.

Even if I were to accept the Landlord's argument that there were three people living in the rental unit with the Tenant in the summer of 2014, I find that the Landlord has failed to establish that this is an unreasonable number of occupants, given that the Tenant's unit consists of two cabins that have been joined.

In determining this matter I have placed little weight on the written submission of a former occupant of the rental unit, who declared that there were eight people living in the unit in July of 2014 and four people living in the rental unit in October of 2014. As I have no means of determining how this occupant arrived at the conclusion, I find that her observations have limited value. I find it entirely possible that she assumed a large number of people were living in the unit simply because they visited on a regular basis.

Even if I were to accept that on occasion the Tenant had eight guests in the rental unit, I find that the Landlord has failed to establish that this is an unreasonable number of guests, given that the Tenant occupies two combined cabins.

I therefore find that the Landlord has failed to establish that the Landlord has grounds to end this tenancy in accordance with section 47(1)(c) of the *Act*.

Section 47 (1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant or a guest of the tenant unreasonably disturbs or interferes with the landlord or another occupant of the residential complex. The Landlord bears the burden of establishing that it has grounds to end the tenancy on this basis.

Typically an unprovoked physical assault by a tenant or a guest of the tenant on another occupant would justify ending a tenancy. In these circumstances, however, I find that the Landlord has provided insufficient evidence to show that a guest of the Tenant assaulted another occupant.

In reaching this conclusion I was heavily influenced by the lack of detail of the incident in the written documentation provided by the alleged victim. In her written submission the occupant merely declares that she has been "personally attacked". I find this could refer to a physical or verbal altercation. In the absence of more detailed information, I am unable to end a tenancy on this basis.

While I accept that the occupant who wrote the letters dated July 08, 2014, July 30, 2014, and October 04, 2014 was bothered by the presence of the Tenant, I find that her concerns are largely centered around her perception of the Tenant and his guests, rather than behaviours that would typically justify an end to the tenancy. I note that the Landlord has not submitted any evidence from any other occupant of the residential complex that corroborates this occupant's concerns. I further note that the occupant who wrote the letter had vacated the rental unit almost one month before the One Month Notice to End Tenancy was served to the Tenant. I therefore find that I am unable to end this tenancy on the basis of the written submissions of this occupant, who did not attend the hearing to provide more detailed explanation of her concerns.

I find that the Landlord has submitted insufficient evidence to show that the Tenant currently has unlicensed vehicles on the property or that he is parking his vehicles in a manner that restricts traffic flow. In reaching this conclusion I was heavily influenced the absence of evidence, such as photographs of improperly parked vehicles or unlicensed vehicles, which corroborates the Landlord's submissions or which refute the Tenant's denials. I therefore find that I am unable to end this tenancy as a result of how the Tenant is storing/parking vehicles.

After considering all of the submissions made by the Landlord, I find that the Landlord has failed to establish that the Landlord has grounds to end this tenancy in accordance with section 47(1)(d)(i) of the *Act*.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to sections 47(c) or 47(2)(d)(i) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy. I find that this tenancy continues until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I hereby authorize the Tenant to deduct \$50.00 from his next rent payment, as compensation for the filing fee he paid for this Application for Dispute Resolution.

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: January 14, 2015

Residential Tenancy Branch

