



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 by way of conference call concerning an application made by the tenants for an order cancelling a notice to end the tenancy for cause. The landlord and one of the tenants attended the hearing and the tenant was represented by legal counsel. The landlord called 3 witnesses. The parties and the witnesses each gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and more specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began in 2011 and the tenants still reside in the rental unit. The tenants are mother and son, and the landlord has not seen the mother around the rental complex for about 7 weeks. Rent in the amount of \$595.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$297.50 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex that contains 42 units.

The landlord further testified that he served the tenants with a 1 Month Notice to End Tenancy for Cause on November 27, 2014 by personally handing it to one of the tenants. A copy of the notice has been provided and it is dated November 27, 2014 and contains an effective date of vacancy of December 31, 2014. The reason for issuing the notice is: "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 testified that RCMP members have been called to the rental complex by the caretaker who lives in the building 4 or 5 times. On one of those occasions, one of the tenants busted out the front patio door while impaired and was removed from the building and placed in the drunk-tank twice. The tenants agreed that they would keep the tenancy but one would leave. Now the mother is gone but the company that her son keeps has been there all hours of the day and night causing disturbances to other tenants on the balcony and in the common hall by screaming and being intoxicated. There are 9 rental units on the tenant's floor. Two other tenants have told the landlord that they will move out if it doesn't stop. Police also threatened to remove the male tenant, and after his mother moved the police were called again toward the end of October or November, and that's why the notice to end the tenancy was issued.

The landlord's first witness (JB) testified that she is the caretaker of the rental complex and has called the police 4 or 5 times respecting the tenants, and the mother was taken into custody twice. The police have been called a couple of times since she has not been on the rental property due to noise complaints at night in and outside of the rental unit, but the tenant was not taken into custody. On one occasion a guest of the tenant went to another rental unit and apparently stole money and then went back to the tenant's rental unit. The other tenant came out yelling and the guest responded by yelling. Another tenant opened her door and the guest tried to push her way into that unit and a fight ensued. The guest was put in jail and the witness believes the guest had been staying in the rental unit with the tenant for about a week. The police allowed her to return to retrieve her belongings.

On another occasion before Christmas, the tenant asked the witness to get rid of his guests by telling them they couldn't stay. The guest was the cousin of the tenant and she and her boyfriend had been there for over a month. They had been fighting and arguing, and the witness did talk to her. The guests left 2 or 3 days ago and it's been quiet since. The tenant has been verbally warned quite a few times about disturbances, although the witness does not know the dates, but told the tenant he can't move people in without the landlord's permission.

The landlord's second witness (SB) testified that she is a neighbour living in the rental complex and a guest of the tenant tried to walk right into the witness' apartment. The witness told her she couldn't enter and the witness called the police. The tenant didn't try to stop her from trying to enter the witness' apartment and didn't get involved. Another tenant was screaming in the hall that the guest had stole money from him and he wanted it back. He's 97 years old, and they were hollering at each other. The witness had opened her door to see what was going on and saw the guest go into the tenant's apartment and out again and tried to force her way into the witness' apartment by shoving her. The police could hear her yelling over the phone when the witness called. When the police arrived, they took her away.

The tenant testified that his mother shattered her ankle and had surgery on December 30, 2014. She is not able to get out of bed and is currently staying with a friend and looking for another place to live, but moved out of the rental unit 7 weeks ago. The

landlord was screaming at her outside the building, using foul language telling her that he wanted her out. No written eviction was served but she left and took her clothes and personal effects. Her furniture is still at the rental unit and she still pays half the rent.

The tenant's cousin and spouse arrived 2 months ago and they argue. The tenant told them they can't keep doing that so they stop. The tenant told the landlord's caretaker to not let her in the building if she is intoxicated.

Explaining the incident with the neighbouring tenants, the tenant testified that the woman is a friend of the tenant's mother and stayed in the rental unit for 2 nights. She got really weird and hadn't taken her medication. The tenant asked her to leave and locked the door behind her. Apparently she went to another unit, but the tenant never let her back in. The woman arrived at the tenant's balcony door trying to get in a few days later to get her backpack, but the tenant handed it to her at the door and refused to let her back in. Since then, because the tenant's balcony is ground level, the tenant has placed a sign that says, "Buzz in or buzz off."

The tenant further testified that he gets along well with neighbours and the caretakers. The landlord told the tenants that one of the tenants or both would have to move out. There have been no written complaints, no complaints to the tenant from other tenants, and no complaints to the police about him. The tenant called the police about his mother in August, but the only complaint has been an oral complaint from the landlord about the tenant and his mother arguing. The only other complaints were about the tenant's mother before she left.

Closing submissions of the landlord: The police have been at the rental unit 4 or 5 times and the mother has been taken away twice. Further, the tenant has admitted to his guests causing a disturbance and he is responsible for guests; the landlord cannot evict guests.

Closing submissions of the tenants: The mother is no longer residing at the rental unit and is not coming back, so any disturbances caused by her are no longer an issue. There have been no other incidents or calls. The tenant dealt with it. The landlord has failed to make the case and gave no warnings to the tenant.

Analysis

Where a tenant disputes a notice to end the tenancy when issued by the landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. With respect to the reason for issuing it, the landlord need only prove that prior to issuing it, the tenant or the tenant's guests significantly interfered with or unreasonably disturbed another occupant.

I agree with the landlord that the tenant is responsible for his guests, and it's clear in the evidence that the tenant was bothered by the behaviour of a guest and sent her out of his rental unit into the common area and left her to be someone else's problem. That ultimately turned into a problem because the guest certainly caused some disturbances. The landlord's agents didn't issue any warning in writing, but I don't think that's particularly necessary. If the tenant wanted to get rid of his guest, perhaps he ought to have sent her out the balcony door and locked it to ensure she didn't have access to the common areas allowing her to bother others.

However, the other difficulty is that neither the landlord's agents nor the landlord kept records of any disturbances or dates, nor could the witnesses provide the dates. The notice is dated November 27, 2014, but I have no idea in the evidence before me if the disturbance or any disturbances happened before or after the notice was issued, or if the notice was issued in anticipation of the disturbances described. I find that the landlord has failed to establish that the notice was issued in accordance with the *Residential Tenancy Act*. The notice to end tenancy is cancelled and the tenancy continues.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated November 27, 2014 is hereby cancelled and the tenancy continues.

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 08, 2015

Residential Tenancy Branch

