Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC and 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 Landlord and the Tenant agree that on January 19, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord.

On January 20, 2015 the Tenant submitted documents the Tenant wishes to rely upon as evidence. The Landlord and the Tenant agree that on January 20, 2015 copies of these documents were personally served to the Landlord. As the Landlord acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

The Tenant with the initials "B.L." stated that the Tenant delivered additional documents to the Residential Tenancy Branch on February 02, 2015. He stated that copies of these documents were given to the building concierge on February 02, 2015, with the understanding that they would be passed on to the Landlord. The Landlord stated that he received these documents from the concierge on February 02, 2015.

The Tenant with the initials "B.L." stated that the Tenant delivered one additional document to the Residential Tenancy Branch on February 03, 2015. He stated that a copy of this document was given to the building concierge on February 03, 2015, with the understanding that they would be passed on to the Landlord. The Landlord stated that he received these documents from the concierge on February 03, 2015.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure stipulates that, to the extent possible, an applicant must submit copies of all documentary and digital evidence to be relied upon at the hearing to the Residential Tenancy Branch when the Application for Dispute Resolution is filed.

Rule 3.1(f) of the Residential Tenancy Branch Rules of Procedure stipulates that within three days of the hearing package being made available by the Residential Tenancy Branch, an applicant must serve each respondent with copies of the evidence submitted to the Residential Tenancy Branch with the Application for Dispute Resolution.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

I find that the documents that were submitted to the Residential Tenancy Branch and served to the Landlord by the Tenant on February 02, 2015 and February 03, 2015 did not comply with the timelines established by the Residential Tenancy Branch Rules of Procedure, as they were only received by the Landlord two/three days prior to the hearing.

The Landlord stated that he delivered document to the Residential Tenancy Branch on February 02, 2015. He stated that copies of these documents were sent to the Tenant, via registered mail, on February 02, 2015. The Tenant with the initials "B.L." stated that these documents were received in the mail on February 03, 2015.

Rule 3.15 stipulates that a respondent must ensure that documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that the documents that were submitted to the Residential Tenancy Branch and served to the Tenant by the Landlord on February 02, 2015 did not comply with the timelines established by the Residential Tenancy Branch Rules of Procedure, as they were only received by the Tenant two days prior to the hearing.

The Landlord and the Tenant were advised that I was not in possession of any of the documents that were submitted to the Residential Tenancy Branch on February 02, 2015 or February 03, 2015. The parties were asked if they wished to have the matter adjourned until I received the late submissions and they both indicated they wished to proceed with the hearing, with the understanding that I would review the documents once I received them.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that I may consider evidence that is not served on time if the evidence is relevant. On the basis of the description of the late evidence provided by the parties during the hearing, I determined that at least some of the documents would likely be relevant to my decision.

On February 06, 2015 I received the evidence the Landlord submitted on February 02, 2015 and the evidence the Tenant submitted on February 04, 2015, at which time I confirmed that some of the documents are highly relevant.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure further stipulates that I may consider evidence that is not served on time if accepting the late evidence does not unreasonably prejudice one party. As both parties served late evidence and are, therefore, equally disadvantaged, I find that accepting the late evidence does not unreasonably disadvantage either party.

I therefore find it reasonable to accept the late evidence the Landlord submitted on February 02, 2015 and the late evidence the Tenant submitted on February 04, 2015. The Landlord and the Tenant both indicated that they did not need additional time to consider the late evidence. I had not received the late evidence the Tenant submitted on February 03, 2015 and that evidence was, therefore, not considered when rendering this decision.

I note that all evidence in my possession was reviewed and considered, although only evidence that was directly relevant to my decision in this matter was referenced in this decision.

During the hearing the Landlord and the Tenants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

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 this tenancy began on October 01, 2014 and that rent of $3,000.00 is due by the first day of each month.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant with the initials “B.L.” on January 10, 2015, which declared that the Tenant was required to vacate the rental unit by February 28, 2015.

The reasons cited for ending the tenancy are that the Tenant has allowed an unreasonable number of occupants in the unit; 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; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord’s property at significant risk; that the Tenant has engaged in illegal activity that has, or is likely to, damage the Landlord’s property; that the Tenant

has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the Landlord.

In support of the Notice to End Tenancy the Landlord stated that on December 13, 2014 the Tenant had a party in the rental unit. He stated that the Tenant's guests threw cigarette butts out of the rental unit onto a lower balcony and onto common property. He stated that he understands the concierge asked the Tenant to "limit the noise" on three occasions.

The Landlord submitted a copy of a concierge logbook as evidence. Entries in the logbook from December 13, 2014 indicate that the concierge received three noise complaints on that date; that the concierge told the Tenant to reduce the noise on two occasions; and that the concierge told the Tenant to end the party on his/her third visit.

The Landlord stated that somebody also vomited out of an exterior door in the rental unit onto a lower balcony. He acknowledged that there was also a party in a common room above the rental unit on December 13, 2014 but he does not believe someone from that event could have vomited onto the lower balcony, as they would have had to vomit over a fence near the play area, which is approximately 7 feet high.

The Tenant with the initials "M.K." agreed that there was a party on December 13, 2014; that the party was loud and likely disturbed other occupants; and that cigarette butts were thrown out of the rental unit. He stated that there were approximately 25 people at the party; that they complied with the concierge's first request to reduce the noise; and that they complied with the concierge's second and final request to end the party.

The Tenant with the initials "M.K." stated that there was another party in the common room located above the rental unit and it is possible that someone from that party vomited onto the lower balcony. He stated that he did not observe anyone vomit out of the rental unit and he believes he would have witnessed that if it had occurred. He stated that someone from the other party could have climbed onto a 2 foot retaining wall near the play area and then would simply have to lean over a fence of approximately 4 feet in order to vomit onto the lower balcony. I note that in the Tenant's first written submission the Tenant declared that they were "unable to contain the noise levels and the cigarette butts/vomit on our neighbours below".

The Tenant submitted photographs of the residential complex, which shows the rental unit in location to the common room and the play area.

The Tenant with the initials "M.K." stated that both Tenants understand the noise disturbances and the cigarette butts are not acceptable and they do not intend to have another party at the rental unit. He stated that after the party they apologized to the concierge and to the Landlord. He stated that they also left notes of apology on the doors of their neighbours on the 4th and 6th floor.

The Landlord submitted a letter from the strata manager, dated December 15, 2014, in which the owner of the rental unit was advised of the incident on December 13, 2014 and in which the owner was given the opportunity to provide a written response to the report or to request a hearing. The Landlord submitted a letter from the strata manager, dated January 05, 2015, in which the owner was advised that the strata had not received a response to the letter of December 15, 2014 and that a $50.00 fine was being levied.

The Landlord stated that on December 31, 2014 the concierge received complaints about noise in the rental unit, although the complaints were not brought to the attention of the Tenant. He stated there was no party in unit 603 on December 31, 2014.

The Tenant with the initials "B.L." stated that they had a few guests on December 31, 2014 but they were never advised that they were being too loud. He stated there was another party in unit 603 unit on the same evening and it is possible those guests were being loud.

I note that the concierge logbook submitted in evidence has no record of noise complaints from any unit on December 31, 2014.

The Landlord stated that on December 31, 2014 one of the Tenant's guests assaulted the concierge. He stated that the police were called but no charges were laid.

In the concierge logbook that was submitted in evidence, the concierge recorded the circumstances of the altercation of December 31, 2014. It is clear from her report that she asked the Tenant's guest to leave because she believed he entered the residential complex "without being buzzed", although it is unclear how he would have done so. The concierge reported that the guest did not comply with her request to leave so she "moved him physically out of the lobby and he kicked me in the stomach". The concierge reported that she called the police who viewed the security camera.

The Tenant submitted a document from the guest who was in the confrontation with the concierge on December 31, 2014, in which the guest declared that he went to the lobby to help a third party access the residential complex; that he opened the front door to try and locate the third party; and when he attempted to re-renter the complex the concierge told him he was not permitted to enter the complex without being "buzzed in" by an occupant of the complex. He stated that he argued with the concierge who subsequently hit him six times before he pushed her in self defense. He stated that the police attended the complex and arrested him but, after viewing the security camera recordings they determined that he had acted in self defense.

The Tenant submitted an email who was with the guest who was in the confrontation with the concierge on December 31, 2014 when that guest was detained by the police. This guest confirms that after viewing the security footage the police informed the guest involved in the confrontation that there was "no wrong doing in (sic) our part"

The Landlord submitted a letter from the strata manager, dated January 02, 2015, in which the owner of the rental unit was advised of the disturbance on December 31, 2014 and in which the owner was given the opportunity to provide a written response to the report or to request a hearing. The Landlord submitted a letter from the strata manager, dated January 19, 2015, in which the owner was advised that the strata had not received a response to the letter of January 02, 2015 and that a $50.00 fine was being levied.

In a letter from the strata corporation to the owner of the rental unit, dated January 02, 2015, the author of the letter refers to a "disturbance" on December 31, 2015. The letter declares that this is not the first time the Tenants and/or their guests created "excessive noise".

The Landlord stated that on December 31, 2014 the Tenant's guests placed tissue in the lock of an entrance door, which compromised the security of the building by preventing the door from closing properly.

In the concierge logbook that was submitted in evidence, the concierge recorded that guests of the rental unit placed tissue in the lock of an emergency exit so they could re-enter the building. The concierge does not declare how she knows the tissue was placed in the lock by guests of the rental unit. The Landlord stated that he believes the concierge viewed surveillance cameras to determine who placed the tissue in the door lock.

The Tenant with the initials "B.L." stated that their guests did not place tissue in the door lock.

The Landlord submitted a letter from the strata manager, dated January 06, 2015, in which the owner of the rental unit was advised that guests of the rental unit "inserted tissue into the emergency door lock" and in which the owner was given the opportunity to provide a written response to the report or to request a hearing. The Landlord submitted a letter from the strata manager, dated January 20, 2015, in which the owner was advised that the strata had not received a response to the letter of January 06, 2015 and that a $20.00 fine was being levied.

The Landlord stated that on October 29, 2015 the parking gate was activated by a fob belonging to the rental unit and the security camera shows a white truck or SUV enter the parking garage without pausing to ensure the gate closed behind the vehicle. He stated that the Tenants are required to wait for the gate to close before proceeding into the parking area to ensure that unauthorized people do not enter the secure parking area.

The Landlord submitted a copy of a concierge logbook as evidence. An entry in the logbook, dated October 29, 2014, indicates that the concierge observed a white SUV exit the premises without stopping at either security gate. The concierge reports

that the vehicle is associated to the rental unit, although the concierge does not declare how the concierge arrived at this conclusion.

The Tenant with the initials "B.L." stated that neither Tenant owns a white truck or SUV nor do they access the parking area with a vehicle of that description. He speculates that the vehicle that was observed entering the parking area without pausing for security reasons was incorrectly associated to the Tenant's access fob.

The Landlord stated that on January 02, 2015 the parking gate was activated by a fob belonging to the rental unit and the security camera shows a vehicle of unknown description enter the parking garage without pausing to ensure the gate closed behind the vehicle.

The Tenant with the initials "B.L." stated that he does not believe either Tenant entered the secure parking area without pausing on January 02, 2015. He stated that on October 21, 2014 he entered the parking area without pausing to ensure the gate closed behind the vehicle; that he was cautioned about this behaviour; and that he has paused after entering/exiting since receiving that warning.

The Tenant with the initials "M.K." stated that on one occasion he entered the parking area without pausing to ensure the gate closed behind the vehicle; that he was cautioned about this behaviour; and that he has paused after entering/exiting since receiving that warning.

The Landlord submitted a letter from the strata manager, dated January 02, 2015, in which the owner of the rental unit was advised that on January 02, 2014 a vehicle associated with the rental unit "drove through the resident and main gate before it closed". In the letter the owner was given the opportunity to provide a written response to the report or to request a hearing. The Landlord submitted a letter from the strata manager, dated January 19, 2015, in which the owner was advised that the strata had not received a response to the letter of January 02, 2015 and that a $10.00 fine was being levied.

The Landlord stated that on October 25, 2014 the Tenant "broke into" the gym in the residential complex. When asked to clarify this allegation he stated that someone entered the gym with a key fob belonging to one of the Tenants at 4:07 a.m., when the gym was not open for use. The Tenant with the initials "B.L." stated that neither of the Tenants were in town on October 25, 2014 and did not use the gym on that date, and that no guest used the gym at that time/date.

Analysis

Section 47(1)(d)(i) of the *Residential Tenancy Act (Act*) authorizes 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.

On the basis of the undisputed evidence, I find that the Tenant hosted a loud party on December 13, 2014 and that cigarette butts were thrown out of the window of the rental unit during the party.

Given the height of the fence around the play area, as depicted in the photographs submitted by the Tenant, I find it highly unlikely that someone vomited over the fence in the play area, even if they climbed onto the retaining wall below the fence. I find, on the balance of probabilities, that someone in the rental unit vomited out of the rental unit during the party and that the Tenant simply did not witness the event.

While I accept that the party on December 13, 2014 was unacceptable, I do not find that this single disturbance is grounds to end this tenancy. In reaching this conclusion I was influenced by the undisputed evidence that the Tenant apologized to the concierge, to the Landlord, and to their immediate neighbours. In reaching this conclusion I was also influenced by the Tenant's acknowledgement that the disturbance was unacceptable ad by their commitment that they will not host another party. While repeated disturbances of this nature would undoubtedly be grounds to end this tenancy, the Tenant's response to the disturbance suggests that there will not be further disturbances of this magnitude.

I find that the Landlord has submitted insufficient evidence to establish that a guest of the Tenant unreasonably disturbed the concierge when he became involved in a physical confrontation with her on December 31, 2014. In reaching this conclusion I was heavily influenced by the absence of evidence, such as surveillance footage, that establishes the guest was not acting in a reasonable manner by protecting himself from a physical assault. On the basis of the undisputed evidence that the police did not charge the guest with assault after they viewed the surveillance footage, I find it entirely possible that the police concluded the guest was acting reasonably in protecting himself, in which case the altercation would not be grounds to end this tenancy.

In determining that this altercation is not grounds to end the tenancy I was influenced, in part, by the undisputed evidence that the guest had already been invited into the residential complex by the Tenant. In the absence of direct evidence from the concierge to explain how the guest accessed the unit without being "buzzed in", I find it entirely possible that the guest did not fully exit the complex after access had been granted access. I therefore find that the concierge did not have grounds to ask the guest to leave the residential complex and that she significantly contributed to the disturbance by asking him to leave.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant created a noise disturbance on December 31, 2014. In reaching this conclusion I was heavily influenced by the absence of any reference to a noise complaint for that date in the concierge logbook.

Although there is a letter from the strata corporation, dated January 02, 2015, which refers to a disturbance on December 31, 2014, I find it entirely possible that this

disturbance refers to the aforementioned physical altercation. Although this letter does mention that this is not the first time the Tenant "created the excessive noise" it is not clear to me that the author intends to suggest that the Tenant was noisy again on December 31, 2014. In the event that the author did mean that the Tenant or a guest of the Tenant was noisy on December 31, 2014, it is not clear to me how the author arrived at that conclusion. I therefore find that the Landlord has failed to establish that this tenancy should end as a result of a noise disturbance on December 31, 2014.

Section 47(1)(d)(iii) of the *Act* authorizes 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 put the landlord's property at significant risk. I find that regularly failing to comply with rules regarding a security gate or tampering with a lock on a door could be grounds to end a tenancy in some circumstances.

I find that the Landlord submitted insufficient evidence to establish that the Tenant's guest(s) compromised the security of the residential complex by placing tissue in the lock. In reaching this conclusion I was influenced by the absence of evidence, such as surveillance footage, which corroborates the claim that the Tenant's guests tampered with the lock. Although the Landlord speculates that the concierge determined the Tenant's guests had tampered with the door after viewing video surveillance, I note that the concierge does not record how she arrived at this conclusion. As the Landlord has failed to establish that the Tenant's guests tampered with the door, I find that the Landlord cannot end the tenancy as a result of this unproven allegation.

I find that the Landlord has submitted insufficient evidence to show that the Tenant left the secure parking area without waiting for the gate to close on October 29, 2014 or January 02, 2015. In reaching this conclusion I was influenced by the absence of evidence, such as surveillance footage, which corroborates the claim that the Tenant did not pause on October 29, 2014 and January 02, 2015, or that refutes the Tenant's testimony that they have always paused after entering the parking area, after being reminded of their obligation to do so.

In determining that there is insufficient evidence to conclude that the Tenant entered the parking area without pausing to ensure the gate closed behind the Tenant's vehicle, I was further influenced by the undisputed evidence that the Tenant does not own a white SUV, which is the description provided for the vehicle that did not pause on October 29, 2014.

In the absence of evidence to show that the Tenant ignored their responsibility to protect the integrity of the secure parking area after being provided with a caution regarding this obligation, I find that the Landlord does not have the right to end the tenancy as a result of the alleged infractions of October 29, 2014 and January 02, 2015.

Even if I were to find that the Tenant or a guest of the Tenant used the gym when it was closed on one occasion, I would not find that this is grounds to end the tenancy for any of the reasons listed on the Notice to End Tenancy. There is no evidence that using the

gym during off hours significantly interfered with or unreasonably disturbed another occupant; seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; put the Landlord's property at significant risk; or that it was illegal.

In determining this matter I have placed little weight on the letters from the strata council in which the owner is advised of the aforementioned allegations and in which the owner is advised that fines are being imposed because the owner did not dispute the allegations. I find that the absence of a response from the owner does not prove the allegations are true, it simply shows the owner has not responded to the strata corporation regarding the allegations.

When a landlord is attempting to end a tenancy in regards to allegations made by a third party and a tenant denies some, or all, of those allegations, I find that the landlord has the burden of proving the allegations are true. In these circumstances, I find that the Landlord has submitted no evidence to support the allegations made by the third party nor has the third party attended the hearing to support the allegations.

Even when all of these incidents are considered collectively, I find that the Landlord has failed to establish grounds to end this tenancy. I therefore set aside the One Month Notice to End Tenancy and I find that this tenancy shall continue until it is ended in accordance with the *Act*.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application

Conclusion

The One Month Notice to End Tenancy that is the subject of this dispute is set aside. The Landlord retains the right to serve the Tenant with another Notice to End Tenancy for Cause if the Tenant or the Tenant's guests significantly disturb other occupants or the Landlord in the future.

I authorize the Tenant to reduce one monthly rent payment by $50.00 in compensation for the cost of filing 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: February 08, 2015

Residential Tenancy Branch