



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, FF

For the landlords – OPC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for cause and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords 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 last part of the landlords' evidence was served to the tenant outside the time frame as indicated under the rules of procedure 3.3. However, I have considered this evidence and find it is duplicate evidence that was already sent to the tenant previously. Therefore in accepting this late evidence I do not believe it will prejudice the tenant at the hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy for cause (the Notice) cancelled?
- Are the landlords entitled to an Order of Possession based on the reasons provided in the Notice?

Background and Evidence

The parties agreed that this tenancy originally started on April 01, 2014 for a two year fixed term tenancy. At that time there were two tenants named on the tenancy agreement. The parties mutually agreed to terminate that agreement when the female tenant moved from the unit. A new agreement was entered

into on September 23, 2014 with the male tenant for a fixed term of one year. Rent for this unit was \$1,750.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$875.00 on March 29, 2014.

The landlord OC provided testimony throughout the hearing on behalf of both landlords. OC testified that the tenant was served with the Notice on January 12, 2015 in person. The Notice provided the following reasons to end the tenancy and has an effective date of February 12, 2015:

- 1) The tenant is repeatedly late paying rent.
- 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,
- 3) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

OC testified that the tenant has been repeatedly late paying rent for four months. Rent was paid on August 05, 2014, December 15, 2014, January 07, 2015 and no rent has been received for February, 2015.

OC testified that the tenant has stated that the landlords were not available to receive interact payments; however, the landlords did not receive email notification of any payments. In January the landlords had requested postdated cheques from the tenant but these have not yet been received. The tenant used to pay by e-transfer but switched to interact payments in December, 2014.

OC testified that since April, 2014 the landlords have received seven complaints about noise from the tenant's unit. On August 29, 2014 the landlords emailed the tenants and explained that there had been three noise violations. If they received a forth noise violation notice or complaint from the Strata Council then the tenants would be issued with a One Month Notice to end the tenancy. The tenants ended their relationship and the female tenant moved out. The landlords thought that this would resolve the noise issues so they agreed to enter into a new tenancy agreement with the male tenant which included an addendum about noise violations.

Since the tenant has been the only occupant the landlords have received three more noise violation letters and compliant letters from two other residents of the building. A third resident made a verbal complaint. OC testified that on January 09, 2015 the police were called by the tenant's neighbour due to excessive noise from the tenant's unit. After the tenant was served the landlords' hearing documents there was another noise complaint on January 28, 2015 where the tenant's neighbour had to knock on the tenant's door, when the tenant answered he said he was not playing music yet the neighbour could clearly hear it from the door. The noise occurred after midnight, mostly on weekends but also occasionally on weeknights.

The landlords received breach letters from the Strata Council about the tenant's actions and were invited to attend a Strata meeting. The tenant was given the opportunity to dispute the complaints in writing and these could have been presented to the Strata Council; however, to the landlords' knowledge the tenant has not done so.

OC testified that when the tenant's girlfriend was moving out her belongings were placed by the fire exit door. This door was blocked for at least two days and possibly as long as a week. The landlords were fined \$200.00 by the Strata for two days of the tenant violating the Strata bylaws concerning keeping the hallways and fire exits clear. The tenant did later pay this fine of \$400.00. The tenant had signed a "K" form indicating he had received and read the Strata rules. This was a breach of the Strata bylaws and a potential fire risk for other residents. OC refers to their photographic evidence showing the tenant's belongings in the hallway and a letter from a resident residing on that floor indicating these belongings were in the hallway for a week.

OC testified that the tenant has also breached the bylaws concerning the building's security. The tenant was caught on the security cameras leaving the main doors of the building open and unattended. In December, 2014 the Strata posted a notice in the elevators for all residents of the building reminding them not to leave the front doors open and to be vigilant about not allowing strangers into the building for the security of all residents.

Based on the above reasons the landlords seek to have the Notice upheld and request an Order of Possession. The landlords also seek to recover their filing fee of \$50.00.

The tenant disputed the landlords' claims. The tenant agreed that he was late with the rent in December and January, but the late payment in August, 2014 fell under the previous tenancy agreement and should not be included in this tenancy agreement. The tenant testified that he was late in December and January because he was sick in hospital throughout those months. The tenant agreed that rent for February has

not yet been paid as the tenant was afraid he was going to be evicted in February and so did not pay the rent.

The tenant testified in regard to the landlords' claims concerning disturbances. The tenant testified that between September and January there have only been three disturbances; two of these occurred when the tenant was sick. The tenant disputed that there was a third disturbance as he claims he was sleeping when the neighbour came round and knocked on his door. The tenant testified that the neighbour could have recorded the noise he claimed came from the tenant's unit late at night at any time. The tenant testified that there was never intent to disturb other people; the tenant explained that he has a medical condition which causes the tenant to act in a manner which caused the first two disturbances. The tenant testified that he does not throw parties and only has one person over at a time.

The tenant disputed the landlords' claims that the tenant's ex-girlfriend's belongings blocked the fire exit for two days. The tenant testified that when HC called the tenant saying there were belongings blocking the fire exit door, the fire exit door was not blocked. The tenant's ex-girlfriend took two days to move out, but her belongings were only in the hallways for about 30 minutes. The tenant testified that the fines incurred were for moving violations not for blocking the fire exit.

The tenant testified that in regard to security violations; the tenant did not leave the front door to the building open and unattended. This occurred while the tenant was sick, the door was left open but the tenant was outside the building and no one else came into the building.

The tenant seeks to have the Notice cancelled and seeks to recover his \$50.00 filing fee.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlords have 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 landlords' evidence is contradicted by the tenant, the landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I am satisfied that the tenant has been late on three occasions with the rent during the period of this new tenancy agreement entered into on September 23, 2014. I refer the parties to the Residential Tenancy Policy Guidelines # 38 which states, in part, that three late payments are the minimum number sufficient to justify a notice under these provisions. The tenant agreed that rent was late in December, January and that no rent has yet been paid for February, Consequently, I uphold this reason provided on the Notice.

With regard to the second reason provided on the Notice; I am satisfied from the evidence presented that the tenant has caused significant disturbances since the new tenancy agreement was entered into in September, 2014. The landlord's corroborating evidence and the testimony of the tenant shows that at least three disturbances took place which had a significant impact on the tenant's neighbour's peace and quiet enjoyment of their homes. While I accept that the tenant has a medical condition which can be difficult to control at times the landlords still have the right to serve the tenant with a notice citing this reason if other residents of the building are disturbed. Consequently, I uphold this reason provided on the Notice.

With regard to the third reason provided on the Notice; I am satisfied from the evidence provided that the tenant or his girlfriend did block the fire exit doors for a period of time. Although the exact period is difficult to prove I find the letters from the Strata Council and neighbours of the tenant show that the fire exit was blocked. However, I am also satisfied that this occurred during the previous tenancy and therefore am not satisfied that this is a violation that occurred during this tenancy agreement.

With regard to the landlords' claim that the tenant breached the Strata bylaw regarding the security of the building; I am satisfied that the tenant did leave the door to the building open but am not satisfied how long the door was open for or if the tenant remained outside in attendance in some capacity during this period. Consequently, I am not prepared to uphold this reason provided on the Notice.

As I have found that the tenant has breached s. 26 of the *Act* by not paying rent on the day it is due and breached the tenancy agreement and Strata bylaws with regard to disturbing other occupants of the building I find I must uphold the Notice and issue the landlords with an Order of Possession.

Section 53 of the *Act* allows an effective date of a Notice to be changed to the earliest date upon which the Notice complies with the *Act*. The Notice was served in person on January 12, 2015. Therefore the effective date of the Notice has been amended to February 28, 2014 to ensure one clear month's Notice was given to end the tenancy.

As the landlords' claim has merit the landlords are entitled to recover the filing fee of \$50.00 from the tenant and may deduct that from the tenant's security deposit of \$875.00 leaving a balance held in trust of \$825.00. This must be retained by the landlords until the end of the tenancy and then dealt with under s. 38 of the *Act*.

The tenant's claim to recover the filing fee is dismissed.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlords effective on February 28, 2015. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed in its entirety without 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: February 11, 2015

Residential Tenancy Branch

