



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Agent for the Tenant applied to set aside a Notice to End Tenancy for Cause; for more time to apply to cancel a Notice to End Tenancy; and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Tenant stated that on February 18, 2015 he filed an Application for Dispute Resolution in which he intended to apply to cancel a Notice to End Tenancy for Cause. In this Application he only applied for more time to file an application to cancel a Notice to End Tenancy. The Agent for the Tenant stated that on February 25, 2015 he amended the Application for Dispute Resolution to include an application to cancel a Notice to End Tenancy for Cause, after he realized the original application had been completed incorrectly.

Given that the application for more time to cancel a Notice to End Tenancy was the only issue in dispute in the Application for Dispute Resolution filed on February 18, 2015, I find it reasonable to conclude that the Agent for the Tenant intended to dispute the Notice to End Tenancy when he filed the Application for Dispute Resolution on February 18, 2015. I therefore find it reasonable to conclude that the Tenant disputed the Notice to End Tenancy on February 18, 2015, in spite of the administrative error on the Application, which was corrected on February 25, 2015.

The Agent for the Tenant stated that the amended Application for Dispute Resolution was delivered to the Landlord's office sometime in February of 2015. The Agent for the Landlord stated that this document was received at the office on February 27, 2015.

On March 02, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were served to the Tenant by registered mail on March 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 submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a Notice to End Tenancy?
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 that this tenancy began on October 01, 2014 and that rent of \$600.00 is due by the first day of each month.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on February 11, 2015, which declared the Tenant must vacate the rental unit on March 31, 2015. This Notice to End Tenancy, dated February 10, 2015, is the Notice that is being disputed by the Tenant. The Agent for the Tenant stated that he located this Notice on the door of the rental unit on February 11, 2015.

The reasons for ending the tenancy cited on the Notice to End Tenancy were 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 interest of another occupant or the Landlord; 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 breached a material term of the tenancy that was not corrected within a reasonable time.

The Agent for the Tenant stated that he works in a remote camp, which does not have internet access. He stated that left for camp on February 11, 2015, which was the day he located the Notice to End Tenancy, and he did not return from camp until February 18, 2015, at which time he disputed the Notice to End Tenancy on behalf of his mother.

The Agent for the Tenant represented his mother at the hearing, as she has difficulty hearing. He stated that she had surgery on January 15, 2015 and was unable to leave the house between February 11, 2015 and February 18, 2015. He stated that he is the primary caregiver for his mother and that she relied on him to dispute the Notice to End Tenancy.

The Landlord did not oppose the request for more time to apply to cancel the Notice to End Tenancy.

The Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because of noise. The Agent for the Landlord #1 stated that an occupant of a neighbouring rental unit informed her that there had been an excessive amount of noise coming from the rental unit on December 17, 2014.

The Agent for the Landlord stated that this was the first complaint regarding noise from the rental unit. She stated that a "Breach Letter", dated December 18, 2014, was served to the Tenant in regards to this noise complaint. A copy of this letter was submitted in evidence.

The Agent for the Tenant stated that the occupant of the neighbouring rental unit did discuss her noise concerns with his mother in December of 2014 and the Tenant did receive the "Breach Letter" dated December 18, 2014. He acknowledged that he and the Tenant may cause more noise than most occupants as his mother has difficulty hearing and he often has to raise his voice to be heard. He stated the raised voices are directly related to the Tenant's hearing difficulty and they are not "fighting".

The Agent for the Landlord #1 stated that the Landlord received no further noise complaints until they received a letter from the aforementioned occupant, dated January 03, 2015. In this letter, which was submitted in evidence, the occupant declared that she was ending her tenancy because the Agent for the Tenant "continues to party or entertain very loudly every night"; there is "yelling" and "fighting"; and people are "coming and going".

The Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because the Agent for the Tenant threatened to harm another occupant of the residential complex. The Agent for the Landlord #2 stated that the aforementioned occupant told her that the Agent for the Tenant threatened to kill her if she complained about noise to the Landlord. In her letter of January 03, 2015 this occupant declared that she is afraid for her safety and health.

The Agent for the Tenant stated that he has never spoken to the occupant regarding noise and he has never threatened to harm her.

The Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because the Agent for the Tenant is living in the rental unit without permission from the Landlord, which the Landlord contends is a breach of the tenancy agreement. She stated that the Agent for the Tenant is frequently seen at the residential complex and in the rental unit, which causes the Landlord to believe he is living in the unit.

The Agent for the Landlord #2 stated that he was inside the rental unit during an inspection on February 02, 2015, at which time he observed several personal items he believed belonged to the Agent for the Tenant in the bedroom of the rental unit. He stated that the Agent for the Tenant was present during the inspection and that based on his observations he concluded that the Agent for the Tenant was residing in the unit.

He stated that there is only one bed in the unit and he speculates that the Agent for the Tenant sleeps on the sofa.

The Agent for the Landlord stated that the Tenant was given a "Breach Letter", dated February 02, 2015, in which the Tenant was informed that the Agent for the Tenant must apply to be added to the tenancy agreement. This letter was not submitted in evidence.

The Tenant acknowledged receipt of the letter dated February 02, 2015. The Agent for the Tenant stated that he has informed the Landlord that he is not residing in the rental unit. The Agent for the Tenant stated that he is frequently at the rental unit caring for his mother and that he does occasionally stay overnight, at which time he sleeps on the sofa. He provided a residential address and says he has lived at that address for the past six months.

Analysis

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling.

On the basis of the undisputed evidence, I find that the Tenant was medically unable to leave the house between February 11, 2015 and February 18, 2015 for the purposes of disputing the Notice to End Tenancy that was received on February 11, 2015. I therefore find it was reasonable for her to wait for her son to return to assist with this matter.

On the basis of the undisputed evidence, I find that the Agent for the Tenant left town on February 11, 2015 and did not return until February 18, 2015, at which time he filed an Application for Dispute Resolution regarding the Notice to End Tenancy that was served on February 11, 2015. On the basis of the undisputed evidence, I find that the Agent for the Tenant was in a remote location without internet service, which made it difficult, if not impossible, to dispute the Notice to End Tenancy within the legislated time period.

I find that the reasons for not disputing the Notice to End Tenancy within five days of receiving it are strong and compelling and I grant the Tenant's application for more time to apply to set aside the Notice to End Tenancy. In reaching this conclusion I was influenced, to some degree, by the fact the Landlord did not oppose the application and, to some degree, by the fact the deadline was missed by only three days.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant or a person permitted on the property by a tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property. On the basis of the undisputed evidence, I find that another occupant of the residential property reported a noise disturbance to the Landlord on December 17, 2014.

Even if I accepted that the Tenant or her guest(s) was unreasonably loud December 17, 2014, I would not conclude that the Landlord had grounds to end this tenancy on the basis of this isolated incident. In reaching this conclusion I was heavily influenced by the absence of any direct evidence, such as a statement from the person who was disturbed, regarding the volume, duration, or nature of the disturbance on that date.

On the basis of the undisputed evidence, I find that on December 18, 2014 the Landlord reminded the Tenant that she and/or her guests must not disturb other occupants of the residential complex. I find that the Landlord has submitted no evidence to show that the Tenant or her guest has disturbed any occupant after December 18, 2014.

Although an occupant of the residential complex did send a letter to the Landlord in which she declares she is ending her tenancy because the Agent for the Tenant “continues to party or entertain very loudly every night”; there is “yelling” and “fighting”; and people are “coming and going”, she does not declare whether she is referring to disturbances after December 18, 2014. In the absence of evidence that clearly shows the Tenant continued to disturb others after being warned on December 18, 2014, I cannot conclude that this tenancy should end as a result of noise.

I note that the occupant's declaration that there is noise “every night” is not consistent with the fact she only complained about the noise on one occasion. In the event the occupant was disturbed by noise “every night” she should have brought her concerns to the attention of the Landlord who could then inform the Tenant, thereby enabling the Tenant to modify her behaviour.

In my view, the Landlord has failed to establish that this tenancy should end as a result of noise. The Landlord retains the right to end this tenancy if the Tenant or her guests disturb other occupants in the future.

I find that the Landlord has submitted insufficient evidence to establish that the Agent for the Tenant threatened to harm an occupant of the residential complex. In reaching this conclusion I was heavily influenced by the absence of any direct evidence, such as a statement from the person who was disturbed, regarding the alleged threat. In determining this matter I was heavily influenced by the testimony of the Agent for the Tenant, who denies making any threats. I find his denial is more compelling than the occupant's unexplained references to being afraid for her safety.

In determining whether threats were made I have placed little weight on the testimony Agent for the Landlord #2, as she was not present when the threats were made and anything she was told is subject to the frailties of hearsay evidence.

I find that the Landlord has submitted insufficient evidence to show that the Agent for the Tenant is residing at the rental unit. I find that the Tenant has given a reasonable explanation for his frequent presence at the residential complex and I therefore cannot

conclude that the observations made by the Agents for the Landlord prove that he is living there.

In determining that there is insufficient evidence to conclude that the Agent for the Tenant is living there I was influenced, in part, by the fact this is a one bedroom rental unit and there is no evidence to show that the Agent for the Tenant is sleeping on the couch on a regular basis.

In determining that there is insufficient evidence to conclude that the Agent for the Tenant is living there I was influenced, in part, by the Agent for the Tenant's testimony that he is residing at an alternate address.

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if a tenant fails to comply with a material term of a tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Even if I were to conclude that there was a material term in the tenancy agreement that prohibits a third party from living in the rental unit without permission from the Landlord, I would not end this tenancy on this basis, as I have not concluded that anyone other than the Tenant is living in the unit.

After considering all the evidence, I find that the Landlord has not established grounds to end this tenancy. I grant the Tenant's application to cancel this One Month Notice to End Tenancy.

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 for Dispute Resolution.

Conclusion

As I have granted the Tenant's application to cancel this Notice to End Tenancy, this tenancy shall continue until it is ended in accordance with the *Act*.

As the Tenant's Application for Dispute Resolution has merit, I authorize the Tenant to deduct \$50.00 from one rent payment in compensation for the fee paid to file 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: March 23, 2015

Residential Tenancy Branch

