



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for Cause.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant 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 an Order to cancel the One Month Notice to End Tenancy for Cause?
- If not is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy started on March 16, 2013 for an initial six month term which has since reverted to a month to month tenancy. Rent for this unit is now \$635.00 per month due on the 1st of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) on January 28, 2015 in person. The Notice has an effective date of February 28, 2015 and gave the following reasons to end the tenancy:

- 1) *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,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*
- 2)) *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The landlord testified that the tenant or persons permitted on the property by the tenant have significantly interfered with and disturbed other occupants. The landlord has received over 24 calls and complaints from other tenants in the building and neighbours living outside the building. The type of complaints relate to noise where the tenant or the tenant's guests have been arguing in the parking lot, noise levels at all hours of the night and early morning. There are screaming and arguments breaking out when the tenant is unable to control her guests. There was an occasion where a guest of the tenants vomited outside another tenant's unit and then unsuccessful tried to clear it up. Another occasion occurred when a guest of the tenants broke into the furnace room and used the floor as a toilet. When confronted by other tenants the tenant goes ballistic in defense of her guests. When the landlord speaks to the tenants about these incidents the tenant always appears calm and mild but is a Jekyll and Hyde character.

The landlord testified that they have received complaints about vehicles coming and going at all hours and often only staying for short periods which could be conducive to drug deals occurring from the tenant's unit. There have also been complaints about prostitution going on in the tenant's unit. The tenant's guests, when confronted by other tenants, have been aggressive and threatening. The landlord testified that he has

spoken to the tenant at least five times in person and three times on the phone regarding the complaints from other tenants and neighbours.

The tenant was sent the first warning letter on July 08, 2013. This letter referred to the landlord being contacted by local authorities about unusual activity in and around the building and suspicious activity reported to be coming from or related to the tenant's unit. This also refers to vehicles being parked and occupants of vehicles entering the tenant's unit and shortly after leaving with bags or packages. Confrontations and screaming has been heard and the individuals involved are seen entering the tenant's unit. Disturbances with a man on a motorcycle who regularly visits the tenant and disturbs the neighbours with his motorcycle and individuals seen cutting between trees going to the tenant's unit and leaving minutes later.

Another warning letter was written on August 13, 2013 but was not sent as the tenant assured the landlord she would deal with her guests. A second warning letter was sent on January 29, 2014. This letter dealt with complaints received by the landlord concerning disruptive behaviour from the tenant or guests of the tenant in the last few months. A serious dispute between the tenant and a male guest occurred which involved a great deal of shouting and arguing into the early hours of the morning. A male guest shouting from the balcony saying he rented the unit. The landlord testified that the unit is rented to the tenant alone yet she has allowed other occupants to reside in the unit. There have also been complaints about the tenant doing laundry after 9.00 p.m. when the laundry room is not to be used after 9.00 p.m. as it disturbs other tenants. Guests of the tenant were also seen smoking in the laundry room.

The landlord agreed that no further warning letters were sent to the tenant throughout 2014; however as the complaints about noise, unacceptable activities in and around the building and confrontations with other tenants continued the landlords then served the tenant with the Notice in January 2015.

The landlord recalls an incident where the tenant's neighbour was sent a letter concerning complaints made against the tenant. This was inadvertently sent to the tenant's address instead. The president of the management company even called the tenant to discuss the complaints with her. There was an incident where someone was syphoning gas and the outside of the building smelt of gas. The RCMP were called at that time. Since the tenant was served with the Notice most of the incidents have ceased with the exception of an incident where the tenant confronted a neighbour about the complaints and an altercation between them occurred.

The landlord seeks to have the Notice upheld and orally requested an Order of Possession of the rental unit effective as soon as possible.

The tenant disputed the landlord's claims. The tenant testified that in the landlord's letter it stated that local authorities had contacted the landlord but there is no proof of this. The incidents in which the landlord states the tenant's neighbours have complained about noise are all false. There have been some incidents and one confrontation on the street but nothing that is in violation of the tenancy. The tenant testified that she has contacted the landlord and informed him that these allegations are mistruths.

The tenant testified that other tenants have confronted the tenant's guests as they come into the tenant's unit. Some neighbours also confronted a 13 year old child sitting in the back of a car which was idling in the parking lot.

The tenant refers to the complaint about the tenant doing laundry after 9.00 p.m. The tenant testified that there had been an incident with a child vomiting and the tenant had to do laundry. The tenant approached the other tenant on the side of the laundry room to explain and was told that it was OK to do the laundry. The tenant testified that these are not tenancy violations.

The tenant testified that she has received no letters of complaint or warnings for over a year. A month ago the tenant did receive a letter addressed to the tenant at her unit;

however, upon reading it, it was obviously meant for the tenant in unit #1. The letter spoke about false reporting and reprimanding that tenant for making false claims. The tenant testified that she usually goes out to meet her guests to ensure they are parked in the tenant's parking bay and other tenants have yelled profanities at the tenant's guests. The tenant testified that another letter was received from the landlord in February, 2015 in which the landlord states that they do not base complaints on hearsay yet this is exactly what the landlord has done. The tenant testified that she called the police on two occasions and that is the only time the police have been to the tenant's unit. One of these occasions was about the smell of gas and the other occasion was on a civil matter. The landlord is accusing the tenant's guests of being culprits in any wrong doing yet the landlords are relying on information from someone who they have already accused of false reporting. It is not appropriate for the landlord to relay on complaints from a discredited neighbour who the landlord has accused of making false complaints.

The tenant testified that there is a lot of vehicle traffic in and around the building as the building is located six blocks from the hospital and people use the adjacent streets for parking.

The tenant testified that it was the tenant in unit #1 that confronted the tenant and not the other way around. This is the same tenant the landlord wrote to twice accusing her of false reporting but accidentally sent the letters to the tenant.

The tenant testified that she has no knowledge of any guests vomiting outside another tenant's unit or of anyone using the furnace room as a toilet. The tenant agrees she has guests come to visit as the tenant is acrophobic and suffers from a stress disorder. The tenant does not know how other tenants can justify accusing the tenant of drug dealing just because guests come to visit or arrive to drop of grocery's or pick the tenant up. The tenant testified that she has carried bags and packages to and from the unit as it was the tenant's sister's wedding. There is no illegal element or breach of the tenancy regarding this. The tenant testified that she has kept a log of her visitors and no more

than four people have visited in any one day. The tenant testified that it is incredible that other tenants are accusing the tenant's guests of being prostitutes and again the landlord is relaying on hearsay. The tenant testified that there have been no police reports or file numbers in two years of her tenancy.

The tenant testified that the complaint from someone in another building across the street is unfounded as that person cannot see the tenant's unit and is unable to determine who is coming and going from the tenant's unit. That complainant says he saw someone dumping the contents of their vehicle into the parking lots and was high on drugs. How does he know that person is connected to the tenant or was high on drugs. It is the landlord trying to bring an illegal element into this case. There are no police reports of drug dealing and no illegal activities. The tenant testified that when she speaks to the landlord she is able to communicate in an effective manner and does not show aggressive behaviour. The comment made by the tenant's neighbour in a statement about someone throwing a cigarette butt in her window is ludicrous.

The tenant testified that she spoke to man in the landlords compalny concerning the letters sent to the tenant for the neighbouring tenant. He wanted to know if the tenant had any confrontations with that neighbour and the tenant mentioned that neighbour slamming doors and shouting. That landlord said he did not want to alarm the tenant; however, the tenant then gets the eviction notice.

The tenant asked the landlord if he has any evidence from local authorities about drugs or prostitution. The landlord responded that if there was evidence they would have presented it but there was a time the tenant was taken outside to sit in a police car. The tenant testified that this was when the tenant called the police on a civil matter and went outside to talk to the police. The tenant asked the landlord if he acknowledges that the last warning letter was sent a year ago. The landlord said yes. The tenant asks if the landlord said he was not prepared to confront the tenant on issues that are hearsay but does the landlord have any evidence other than hearsay. The landlord responded that they have witnesses. The tenant asked the landlord about his letter in which he stated

he has received phone calls and tenants have expressed fear of retaliation from the tenant or her guests. Is there evidence that the tenant or her guests have been aggressive. The landlord responded that the people visiting the tenant have been aggressive. Other tenants do not make things up and are too scared to call the police. The tenant asked the landlord if the landlord was present during the serious confrontation the landlord referred to in his letter dated February, 2015. The landlord responded that he was not present but they did receive a complaint from the tenant in unit #1.

The Arbitrator asked the tenant if there are packages exchanged outside the unit; is the tenant aware of anyone vomiting outside another tenants unit; is the tenant aware of any guests using the furnace room as a toilet; is anyone else living in the tenant's unit. What was the altercation with the neighbour and has the tenant ever been involved in an argument in the parking lot. The tenant responded that she has grocery's dropped off and people come to pick her up. They may only be there for minutes. No one made the tenant aware of someone vomiting outside another unit or of anyone using the furnace room as a toilet. The tenant testified that her boyfriend who lives elsewhere does visit sometimes four or five times a week. The tenant testified that she has not started any altercations with the neighbour in unit one instead it is that neighbour who shouts at the tenant and confronts her. The tenant testified that some guests did have an argument in the parking lot about two years ago.

The landlord testified that the extra vehicles are not from hospital workers or visitors they are people coming to visit the tenant.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has 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 landlord's evidence is contradicted by the

tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has provided statements from witnesses. They claim to have seen the tenant or the tenant's guests engaging in activities which may warrant an end to the tenancy due to the disturbances these activities cause other tenants and neighbors in adjacent buildings. However, these written statements are not signed or sworn before a Notary. While they carry some weight, when statements are disputed by the tenant then the landlord would have been wise to have called witnesses to attend the hearing to give sworn testimony and submit to cross examination. Without this I must find that the witness's statements carry little weight. The landlord has not carried out investigations himself to gather evidence and is relying on statements from other tenants without fully looking into the matter. There is obviously some conflict between this tenant and the tenant in unit #1 and it would be circumspect for the landlord to investigate both tenants story's to determine what has occurred rather than just taking one person's word over that of the other.

As to the reminder of the complaints against the tenant; I find both parties evidence to be plausible; however, as the landlord has the burden of proof in these matters then the landlord should have requested witnesses to attend and provide corroborating evidence to satisfy the burden of proof. I am of the opinion that the landlord has not exercised due diligence in investigating these matters fully to establish what is going on in the building and has simply taken other tenant's words for it without establishing the facts.

In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I do however caution the tenant to ensure any guests visiting the tenant are supervised so guests do not cause disturbances to other tenants in the building or neighboring buildings. The tenant is responsible for the actions of her guests while they remain on

the property and the tenant can be held accountable for any actions which cause disturbances.

If further disturbances occur from the tenant or the tenant's guests the landlord is at liberty to serve the tenant with a new One Month Notice to End Tenancy which may jeopardize this tenancy.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, January 28, 2015 is cancelled and the tenancy will continue.

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 06, 2015

Residential Tenancy Branch

