



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fraser Marine Dr. Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for more time to dispute a notice to end the tenancy and for an order cancelling a notice to end tenancy for cause.

The tenant attended the hearing and was represented by an Advocate. An agent for the landlord company also attended and called one witness. The parties and the witness each gave affirmed testimony, and the parties were given the opportunity to question each other and the witness 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

- Should the tenant be permitted more time than prescribed to dispute a notice to end the tenancy?
- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on May 1, 2011 and reverted to a month-to-month tenancy after one year. The tenant still resides in the rental unit. Rent in the amount of \$743.12 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 tenant in the amount of \$342.50 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that the maintenance manager and resident manager served the tenant with a 1 Month Notice to End Tenancy for Cause on February 13, 2015 by posting it to the door of the rental unit, and has provided a copy for this hearing. The notice is dated February 13, 2015 and contains an expected date of vacancy of March 16, 2015. The reasons for issuing the notice are:

- 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;
- Tenant has engaged in illegal activity that has or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent also testified that numerous complaints have been received by other tenants in the rental complex of loud noise and loud music, and that the tenant keeps unlocking the Exit Only door to allow his visitors to enter the building. Also received are numerous complaints about lack of security and about tenants being scared to live in the building as well as a lot of damage on the common property.

On one occasion, the landlord's witness received a complaint from another tenant in the complex about loud music from the tenant's rental unit. The landlord's agent went to hear about the complaint and the music was very loud. The landlord's agent knocked on the door, the tenant answered and told the landlord's agent he was watching TV. The landlord's agent told the tenant it was too loud and that he has to respect other tenants.

The visitors are entering the rental complex at night, knocking on neighbours' doors and some of the visitors are intoxicated. The resident manager and cleaner have found human feces, vomit, syringes, drug paraphernalia and urine on stair cases and at the exit door. One person while wondering around the building stole items from the laundry room. Video evidence and photographs have been provided, and the video also shows the tenant leaving the door open and a homeless person enters. The building manager got involved and the person was taken away.

The landlords have received several complaints of other tenants seeing the tenant put something in the door, between the frame and the door, to keep it open. The resident manager received calls twice about it and removed the debris. At first it was paper which would fall when the door was opened and then the tenant used metal. The

landlord's agent also testified that the video shows that the tenant uses the door as his personal entrance and other people follow him into the building. The door has no door handle on the outside and is for exiting the building only, for security purposes. The tenant claimed he is handicapped and sometimes uses a cane but on numerous occasions has not used it and runs fast. To use the exit door, the tenant has to climb up 4 steps but using the other door, there are no stairs at all and the tenant can take an elevator.

Due to vandalism the landlord had to re-wire the camera system completely because a cable was cut, then the exit door had to be replaced due to damage. The fob reader was also damaged 3 times in the last year and the landlord has installed an additional 2 cameras. The landlord's agents are not sure who did it, but the landlord's agents keep asking all residents to not leave doors open allowing homeless people in the building, and this tenant keeps doing it. The landlord's agent testified that the video shows that the tenant does so on a regular basis.

The landlord's agent also testified that the parties had been to arbitration on January 14, 2014 wherein the tenant had applied for an order cancelling a notice to end tenancy for cause. The landlord didn't have very good video recordings at that time so agreed to settle the dispute. A copy of the Decision from that hearing has been provided, and it states that the parties settled, and the director ordered the following:

- a. The tenant shall not permit anyone other than a lawful, reasonable number of guests to have access to the building or his unit,
- b. The tenant will not permit his unit to be used by anyone other than a lawful, reasonable number of guests,
- c. The tenant will not leave any locked security doors partly open enabling anyone to access the building, and
- d. The tenant will be respectful and courteous to all other tenants.

The landlord's agent also testified that the tenant's power got cut off so he used extension cords in the halls. A photograph has been provided. The resident manager contacted the tenant and told him it was a tripping hazard, and the tenant got angry. The tenant plugged it back in and used the landlord's electricity from October 16 to 19, 2014.

With respect to illegal activity, the landlord's agent believes that the tenant operates some kind of business selling something. The landlord has no proof but during the night the tenant goes in and out. The Exit door is open on the video and a friend enters without the tenant. The video also shows that they carefully close the door to prevent the metal from falling allowing them to enter anytime they wish. Bikes and other items

belonging to other tenants have been stolen. With respect to breach of a material term of the tenancy, the landlord's agent testified that notices have been given to the tenant and copies have been provided. The tenant has not changed his behaviour.

The landlord's witness testified that she has been the resident manager of the rental complex since July, 2013 and served the tenant with the 1 Month Notice to End Tenancy for Cause on February 13, 2015 by posting it to the door of the rental unit with another witness present.

The witness has received complaints of loud music and TV and has personally witnessed that coming from the tenant's rental unit.

The witness also testified that numerous complaints have been received about something in the door keeping it open. The tenant let outsiders into the building and they would smoke inside. The witness also found human feces twice, syringes twice, vomit and food scraps in the halls and common areas.

The witness also testified that she knocked on the tenant's door after finding an extension cord in the hallway coming from the rental unit. The witness knocked a few times and called the tenant and told him he had to get permission from the landlord's office, but the tenant replied that he needed the power. The TV was loud in the hallway.

The tenant testified that he is on a medical disability and his hydro is paid by the government. The tenant has never missed a payment for rent or hydro, but last year the government suffered a hacking on the computer systems and missed the payments. When the power went out, the tenant went to see the landlord's maintenance person and he agreed to allow the tenant to plug in his fridge in the hallway. The next day, the resident manager saw it and told the tenant he had to get permission from the office but wouldn't give the tenant a phone number. The tenant testified that he has a right to use the power, but gave another tenant \$20.00 and plugged into that person's power from the balcony. The tenant got ahold of the government and the hydro company, who both advised that it would take a few days to get it sorted out, but that 4 months of hydro payments were missed. The fridge was left plugged in for a few hours per day in the hallway, and also had to pay a reconnection fee to the hydro company.

The tenant further testified that he has never received any warning letters about the exit door being changed to only open from the inside. The tenant has been resident in the complex for 4 years and uses a cane if he walks more than 50 yards. The tenant's rental unit is only a few feet from that door and the other door is further and has a hill which is difficult for the tenant. The tenant denies ever leaving the exit door partly open except sometimes when he goes outside for a smoke, and then he completely closes it.

When the tenant takes the bus, it lets him off by that door. The tenant rented that unit because the door was handy but the new landlord changed it to an exit only door about 6 months ago without any warning. The tenant put a small metal clip in the door but only while there so he can go out and back in again.

The tenant also denies knocking on anyone's door other than on one occasion involving another tenant's cat.

The tenant watches TV but does not have a stereo. The rental unit gets hot so the tenant leaves a window and the balcony door open and the tenant's hearing is bad so he does watch TV loud.

The tenant further testified that the only people he let into the complex are his 3 friends. They visit about twice a month usually and they drink beer but the tenant doesn't drink. The tenant and guests play Black Jack, but about a month ago the guests got irate so the tenant asked them not to return.

The tenant also testified that the person described by the landlord's agent as a homeless person is not homeless but a friend of the tenant. Apparently the person fell and broke his leg and the tenant let ambulance personnel into the rental complex. The tenant found the person crawling on the floor and he was drunk, but the landlord has refused to let the tenant see that video. That was the only time the tenant let anyone in. With respect to a homeless woman, the tenant did not let her into the complex and believes she was living with another tenant.

The tenant seeks an order cancelling the notice to end the tenancy.

Analysis

Firstly, the tenant has applied for more time to dispute the notice. The *Residential Tenancy Act* states that a tenant must dispute a 1 Month Notice to End Tenancy for Cause within 10 days of service, or deemed service. The landlord's witness testified that it was served on February 13, 2015 by posting it to the door of the rental unit. Documents served in that manner are deemed to be served 3 days later, which I find is February 16, 2015. The tenant filed the Tenant's Application for Dispute Resolution on February 19, 2015 which is within the 10 day period, and no further time is required. Therefore, I dismiss that portion of the tenant's application.

I have reviewed the 1 Month Notice to End Tenancy for Cause issued by the landlord and find that it is in the approved form and contains the information required by the *Act*. With respect to the reasons for issuing it, the tenant denies leaving the exit door open

except while remaining at or near the door and never allowed any other persons in. I have reviewed the photographs and the video provided by the landlord. The evidence depicts that other persons entered the rental complex as a result of the tenant leaving the door accessible from the outside within minutes or seconds of the tenant going out that door. It also shows that the people entered without the tenant and therefore I do not accept that they were all guests of the tenant. The tenant agreed at previous arbitration to not leave any locked security doors partly open enabling anyone to access the building.

In the circumstances, I find that the landlord had cause to issue the notice and the tenant's application for an order cancelling it is dismissed.

The *Act* also states that if rent is payable on the 1st day of the month, the effective date of vacancy must be at the end of the month following the issuance of the notice, and that incorrect effective dates are changed to the nearest date that complies with the *Act*. In this case, having found that the notice is deemed to have been served on February 16, 2015, the effective date of vacancy is March 31, 2015. The tenancy ends on that date.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed 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: March 19, 2015

Residential Tenancy Branch

