



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKVIEW APARTMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on February 23, 2015, to cancel a 1 Month Notice to end tenancy issued for cause.

The hearing was conducted via teleconference and was attended by the Landlord, Tenant and the Tenant's Advocate. The Advocate did not submitted evidence; rather she provided assistance to the Tenant and submitted legal arguments on behalf of the Tenant.

The Landlord and Tenant gave affirmed testimony and confirmed receipt of evidence served by the Landlord on March 13, 2015. The Landlord submitted late evidence which was received by the Tenant on March 17, 2015. The Tenant submitted a written response to the Landlord's late evidence. Neither package of late evidence had been received on the Residential Tenancy Branch (RTB) file by the time of this hearing.

The Rules of Procedure # 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are in 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 7 days before the hearing [my emphasis added].

Based on the above, I find that the late evidence was not submitted in accordance with the Rules of Procedure # 3.15. Therefore, I will not consider that late evidence in this decision. The parties were advised that I would consider all documentary evidence that had been served and received in accordance with the Rules of Procedure and all oral testimony that was provided during the March 24, 2015 hearing.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice be upheld or cancelled?

Background and Evidence

The undisputed evidence was the Tenant entered into a month to month tenancy that began on April 26, 2012. Rent of \$850.00 is due on or before the first of each month and on April 26, 2012 the Tenant paid \$425.00 as the security deposit.

The Landlord testified that the issues have been going on for some time and involved the Tenant propping the back door open to allow guests to access the back stairwell, where those guests would use drugs and perform oral sex. The Tenant's guests have also accessed the building by standing out front and yelling up to the Tenant's rental unit to get her to let them inside.

The Landlord referenced a warning letter, submitted in his evidence, which had been issued to the Tenant in August 29, 2013. He argued that he had issued the Tenant several verbal warnings since the written warning had been issued. He argued that the Tenant's guests have been seen sleeping in the hallways and when approached say they are waiting for the Tenant to wake up and let them in to visit her.

The Landlord submitted that on February 14, 2015, he was working on the building and saw a few of the Tenant's guests waiting outside the back door, some of whom were previously evicted tenants. When he entered the back stairwell he asked the male guest (P.) who he was there to see and he told the Landlord he was a guest of the Tenant's. The Landlord said he walked this male guest up to the Tenant's rental unit and a female guest let him into the Tenant's apartment. The Landlord argued that he could have his maintenance manager testify to specific incidents where he had seen female and male guests smoking something inside the building.

The Landlord asserted that a tenant recently moved out of the building and three other tenants have given their notice to move because of the Tenant's guests and their behaviors that have been going on in the building. He pointed to letters which were written complaints submitted by other tenants to support his submissions. As a result of losing the other tenants and the ongoing behaviors of the Tenant's guests, the Landlord issued the Tenant a 1 Month Notice to end tenancy, as submitted into evidence.

The 1 Month Notice was issued on February 16, 2015, pursuant to Section 47(1) of the Act, listing an effective date of March 31, 2015 for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- 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

In support of the reasons for issuing the Notice the Landlord submitted that the Tenant's rental unit is a 1 bedroom unit. The Landlord stated that the Tenant's rent is subsidized by a housing organization who assigned a housing worker to assist the Tenant. The Landlord argued that he has communicated his concerns with the Tenant's worker and was told that the Tenant is not allowed to have anyone living with her.

The Landlord argued that the Tenant is responsible for her guests and it is her guests who are jeopardizing the health or safety of the other occupants because they are roaming around the building and are dealing, smoking, and injecting substances that may or may not be drugs. The Landlord stated "if it walks like a duck it's a duck". The Landlord was not able to provide dates or times of the incidents and argued that he does not track dates but knows for sure these events had occurred in 2014.

The Tenant testified and denied propping the back door open for her guests to gain entry and she disputed the Landlord's submissions that her guests are dealing or doing drugs. The Tenant confirmed that her guests have to call up to her room to gain access because the buzzer / intercom system has been disconnected for over a year. She has asked her guests to try and use a small pebble or to speak quieter when calling her so they do not disturb the other tenants.

She stated that her guests come at all hours of the day and evening. The Tenant argued that her guests do not live with her. She stated that she has maybe 5 or 6 different people who come to visit her on any given day. She asserted that her guests know other people in the building and on many occasions they come to visit her for a short while and then go visit other people in the building.

The Advocate argued that the Landlord has not met the burden of proof to evict the Tenant. She submitted that the Tenant has not allowed an unreasonable amount of occupants as she only has guests who come and visit for short periods of time throughout the day. She stated that there have been no written warnings issued to the Tenant in 2014 or 2015 and noted that the August 2013 warning dealt with a noise complaint and not issues with guests. The Advocate pointed to the witness statements provided by the Landlord, noted that the letters are all anonymous as they are not signed, and they were all dated after the 1 Month Notice was signed which indicates those letters were solicited by the Landlord. She argued that those written statements do not allow the Tenant to ask the complainants probative questions. The Advocate submitted that there was no proof submitted of ongoing issues, only allegations that the guests are doing drugs and are the Tenant's guests.

In closing, the Landlord stated that the complaints from other tenants were initially verbal. The letters are not signed and are submitted anonymously because the tenants fear retaliation. The Landlord confirmed that the buzzer / intercom system had been disconnected for some time; however, it has been fixed and the Tenant need only to give the Landlord her telephone number so she could be added to the buzzer / intercom system. When asked why he did not issue the Tenant any written warnings the Landlord stated "as far as I'm concerned she knows because I've spoken with her".

The Tenant stated that she understood that if the guests who are selling or using drugs, or performing sexual acts in various areas of the building, are verified or proven by the Landlord to have been let into the building by her, the record of this decision, would form part of the Landlord's case should it again come before an Arbitrator for consideration.

Analysis

Upon review of the 1 Month Notice to End Tenancy issued February 16, 2015, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the Landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

In this case, the evidence included arguments that the issues involving the Tenant's alleged guests, have been going on "for some time since August 2013". During the last year and six months the Landlord has taken no formal action, by way of issuing the Tenant formal written warnings or by issuing previous eviction notices for cause.

Based on the above, I find the Landlord is estopped from evicting the Tenant at this time. I make this finding in part because the alleged inappropriate behaviors have been allowed to go on, unmanaged for 18 months. It was not until recently that those behaviors became a real issue for the Landlord; and that is only because other tenants began to give their notice and move out. There is no evidence before me that would indicate the Tenant knew, or ought to have known that she would be evicted based on her actions of allowing guests to visit her or those guests' behaviors inside the building.. Accordingly, I uphold the Tenant's application and I cancel the 1 Month Notice to end tenancy issued February 16, 2015.

Conclusion

I HEREBY CANCEL the 1 Month Notice issued February 16, 2015, and that Notice is of no force of effect. The tenancy continues until such time as it ends in accordance with the Act.

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 25, 2015

Residential Tenancy Branch

