



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTBANK LIONS SENIOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a notice to end tenancy for cause.

An agent for the company (the “Landlord”) named on the Tenant’s Application appeared for the hearing with four of the company board members; however, only the Landlord provided affirmed testimony. The Tenant appeared for the hearing with an Advocate; the Tenant provided affirmed testimony and the Tenant’s Advocate made submissions for the Tenant. The Landlord confirmed receipt of the Tenant’s Application and Notice of Hearing documents. The Tenant’s Advocate confirmed that they had not provided any written evidence prior to the hearing and confirmed receipt of the Landlord’s documentary and digital evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine each other on the evidence provided. I have considered all the evidence in this case but I have only documented the evidence which I relied upon to making findings in this decision.

Issue(s) to be Decided

Has the Tenant established that the notice to end tenancy ought to be cancelled?

Background and Evidence

Both parties agreed that this tenancy of a second floor apartment in a senior’s residential complex started on October 1, 2012. A written tenancy agreement was completed and the parties agreed that the Tenant pays subsidised rent for the rental unit in the amount of \$311.00 on the first day of each month.

The Landlord confirmed that he had served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on February 19, 2015 by placing it into her mail box. The Notice was provided into written evidence and provides a vacancy date of March 31, 2015; the Notice shows the reasons for ending the tenancy is because the Tenant, or a person permitted on the property by the Tenant has: significantly interfered with or unreasonably disturbed another occupant or the Landlord; seriously jeopardised the health and safety or lawful right of another occupant or the Landlord; and put the Landlord's property at significant risk.

The Landlord testified that on September 12, 2014 an altercation occurred between the Tenant and her boyfriend in the parking lot of the rental building. The Landlord stated that the Tenant was intoxicated and the verbal argument then continued when the Tenant and her boyfriend went into her rental suite. The Landlord explained that he received a complaint letter from one of the residents in the suite below in which the resident writes that she could hear the Tenant and her boyfriend arguing as well as the sounds of physical and verbal violence taking place.

The Landlord explained that the police were called by residents after which point the police took the Tenant's boyfriend away from the rental unit. The Landlord provided three witness statements for this incident to corroborate this event.

The Landlord explained that the company board members met with the Tenant on September 16, 2014 and explained to her that the events of September 12, 2014 had caused disturbance to the other residents and that she should not allow her boyfriend into the rental unit again. The Landlord explained that the Tenant agreed and she was sent a letter requesting that she should provide a letter of assurance that her boyfriend would not visit the rental unit again.

However, the Tenant failed to furnish such a letter. As a result, the Landlord provided the Tenant with a letter on November 13, 2014 for the Tenant's boyfriend to sign. The letter, which was provided into written evidence, states that further to the disturbance that took place, the Tenant's boyfriend resolves that he will not visit the tenant or the premises for any reason. The Landlord testified that the Tenant provided him with the signed letter from her boyfriend at the end of November, 2013.

The Landlord testified that in January 2015, they had video cameras installed in all of the common areas of the building. As a result of reviewing the taped events on the video cameras in February 2015, it came to the attention of the Landlord that the Tenant was sneaking her boyfriend into her rental unit. The Tenant was doing this by bringing

her boyfriend in through the South East entrance which was not the normal and usual entry and exit of the building.

The Landlord then presented digital video evidence which displays the Tenant accompanying her boyfriend by the stairs into her rental suite on at least two separate occasions. The Landlord testified that the video evidence suggest that the Tenant's boyfriend was in the Tenant's suite on one occasion for three days and the other occasion overnight.

The Landlord provided supporting evidence of this submitting that the Tenant was doing laundry of her boyfriend's clothes. The Landlord provided witness statement from other residents who had seen the Tenant using two machines to wash male clothes. The Landlord submitted that residents are only allowed to use one machine per person and in accordance with section 8 of the rules and regulations of the building, laundry is for Tenant's use only. The Landlord explained that in accordance with the schedule E to the signed tenancy agreement the Tenant had agreed to provide safe and secure environment during her tenancy.

In relation to the reasons for ending the tenancy because the Tenant had put the Landlord's property at significant risk, the Landlord testified that he had attended the Tenant's rental suite on December 3, 2014 to conduct some repairs. While he was there, he noticed that the Tenant had removed the bedroom smoke alarm as well as the fire door hinge.

The Landlord explained that these two items were mandatory requirements in each unit to protect against fire and to meet building fire code. The Landlord testified that the Tenant explained that the smoke alarm was beeping and the fire door hinge was causing her a shoulder injury during its operation. The Landlord testified that he replaced both items on December 3, 2014.

The Tenant confirmed receipt of the Notice on the same day it was placed into the Tenant's mail box. The Tenant did not dispute the September 12, 2014 incident but explained that the altercation between her and her boyfriend was resolved way before the police were called. The Tenant explained that she did not want her boyfriend to leave but the police decided that it would be the best course of action and he left voluntarily.

The Tenant denied that she or her boyfriend were intoxicated and the Tenant's Advocate pointed out that the Tenant has an anxiety condition that makes her appear to be drunk. The Tenant's advocate submitted that the residents in the building engage in

gossip and the majority of witness statement content was based on value judgment and assumptions rather than hard facts or evidence.

The Tenant did not deny that it was her boyfriend that was on the video evidence but submitted that she had been bringing her boyfriend into her rental suite because the boyfriend had not caused any disturbance since the September 12, 2014 incident and was creating no further problems.

The Tenant's advocate pointed out some discrepancies in the Landlord's evidence which related to incorrect dates of events and the lack of dates on some of the documents. The Tenant's advocate submitted that the Landlord was projecting a fear base amongst the other residents which was based on gossip and assumptions in an attempt to evict the Tenant because she had brought her boyfriend into the rental suite.

When the Tenant was asked about the letter that had been signed by her boyfriend agreeing not to come back to the rental suite, the Tenant's Advocate explained that the Tenant's boyfriend had signed this under duress and obligation because the Landlord had verbally threatened that if they refused to sign the letter the Tenant would be evicted.

In relation to the allegation that the Tenant was doing laundry of men's clothing, the Tenant's Advocate pointed out that the Tenant wears jeans which could easily be mistaken for men's jeans and the Tenant does volunteer work for a charity where she washes used jeans for re-sale and donation. The Tenant testified that laundry is not included in her signed tenancy agreement but that she pays \$10.00 per month to the Landlord to use the facility.

The Tenant acknowledged that she had removed the bedroom smoke detector and the fire door hinge because the fire alarm was stopping her from going to sleep and the door closer was exacerbating her shoulder injury from having to open a heavy door. The Tenant acknowledged that she should not have approached these issues in the manner in which she did and should have addressed these with the Landlord. The Tenant stated that she did not get any evidence from her doctor for her shoulder injury because the Landlord had rectified the issue.

The Landlord responded submitting that the Tenant and her boyfriend had a roller coaster relationship and that there had been issues between them prior to the September 12, 2014 incident. However, the Landlord explained that he does not have any evidence of this. The Landlord said that he was under a duty to protect and preserve the safety of other residents from the Tenant's boyfriend.

Analysis

I find that the Landlord served the Tenant with a Notice that complied with Section 52 of the Act and I accept that the Tenant received the Notice on February 19, 2015. As a result, I find that the Tenant made the Application to dispute the Notice within the ten day time limit stipulated by Section 47(4) of the Act.

An ending of a tenancy is a serious matter. When a landlord issues a tenant with a notice to end tenancy for the reasons in this case, the landlord bears the burden of proving the reasons on the Notice disputed by a tenant.

I have examined the Landlord's evidence in this case and I make the following findings. I find the Landlord seeks to rely on **one** incident where it was indeed proven and undisputed that the Tenant and her boyfriend had an altercation that caused disturbance to other residents on September 12, 2014. However, I note that this incident occurred approximately five months ago and the Landlord has not submitted any evidence to prove that this disturbance continued and was ongoing during the long interim time period until the Notice was issued.

Section 9 of the Residential Tenancy Regulation stipulates that a Landlord must not stop a tenant from having guests under reasonable circumstances in a rental unit. I accept the Tenant's submissions that her boyfriend signed the letter agreeing not to enter the building for fear of her tenancy being ended; and I find the Tenant had no choice under the circumstances to have the letter signed because the Tenant did not offer this letter to the Landlord of her own volition or as a means of her own remedy to the incident of September 12, 2014. Therefore, I have placed little evidentiary weight to the letter signed by the Tenant's boyfriend agreeing not to return to the premises.

I then turned my mind to what impact the Tenant's boyfriend had on this tenancy. I find the Landlord has provided insufficient evidence to show that the subsequent entry of the Tenant's boyfriend in February 2015 caused any disturbance to other residents or jeopardised their safety. The Landlord has access to video footage for this time period but there is no digital evidence of any disturbance by the Tenant or her boyfriend since the incident of September 12, 2014.

I find that when the incident of September 12, 2014 occurred, the Landlord failed to issue the Tenant with a breach letter that required no further disturbances from the Tenant or her boyfriend. Instead, the Landlord pursued another course of action by way of prohibiting the entry of the Tenant's boyfriend. Then several months later, the Landlord now seeks to use the formal Notice in order to end the tenancy because it

came to his attention that the Tenant's boyfriend was visiting the Tenant; instead of basing this eviction on evidence of a new and actual disturbance that took place.

Based on the foregoing, I find the Landlord has failed to provide sufficient evidence to prove the Notice based on **significant** disturbances caused by the Tenant or her guest. I find that one proven incident of a disturbance involving the Tenant and her boyfriend and no evidence from the Landlord of alleged previous incidents, is not sufficient for me to uphold the Notice.

In relation to the Landlord's allegation that Tenant put the Landlord's property at risk, again I turn my mind to the timing of the incident and the issuing of the Notice. The Landlord became aware of the Tenant's breach resulting from the removal of the smoke alarm and fire door hinge at the start of December, 2014. However, the Landlord failed to give any written warning to the Tenant of these infractions subsequent to that breach. Instead, the Landlord now seeks to address this issue with the Notice which was served approximately two months later for those breaches. For this reason, I am not prepared to end the Tenant's tenancy on this basis alone.

In relation to the Landlord's evidence regarding the Tenant doing her boyfriend's laundry, I find that the Landlord's evidence is not sufficient and conclusive enough to prove that the clothing belongs to the Tenant's boyfriend. I find the Tenant provided plausible explanations of why it may have been assumed that she was washing men's clothing. The Landlord's evidence also indicates that the Tenant was using two washing machines. However, I find the tenancy agreement does not specifically prohibit the Tenant from doing so, only that the Tenant shall use laundry for their own use.

Therefore, I find that the Landlord has also failed to provide sufficient evidence that the Tenant is consistently and habitually doing her boyfriend's laundry using the building facilities and I am unable to determine how this evidence relates to the reasons for ending the tenancy. As a result, I cancel the Notice dated February 16, 2015. The tenancy will continue until it is ended in accordance with the Act.

However, the Tenant is strongly cautioned that any further disturbance issues caused by the Tenant or her guests could result in another notice to end tenancy being issued against her. The Tenant must be respectful of other resident's right to quiet enjoyment and the Landlord has a right to operate the building within the rules and regulations that govern the building without any interference from the Tenant. The Tenant is also cautioned that she should report and seek the advice of the Landlord with regards to repairs in the rental suite before taking action to disconnect or alter the rental unit or the safety equipment.

Conclusion

The Landlord has failed to provide insufficient evidence to prove the Notice. The Tenant's Application is granted and the Notice dated February 19, 2015 is cancelled.

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: April 01, 2015

Residential Tenancy Branch

