



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O

Introduction

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

The landlord and the tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. The tenant was also represented by legal counsel and was accompanied by an Advocate, who did not testify or take part in these proceedings. The parties were given the opportunity to question each other respecting the evidence and testimony provided.

The tenant provided additional evidence which was not received within the time set out in the Rules or Procedure, however the landlord did not oppose inclusion of that evidence. Therefore, all evidence of the parties is considered in this Decision. No other issues with respect to service or delivery of evidence were raised.

The hearing did not conclude during the time provided and was adjourned to later in the day for a continuation of the testimony, cross examination and closing submissions.

Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy given to the tenant was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 16, 2014, although the tenant actually moved in on September 11, 2014 and still resides in the rental unit. Rent in the amount of \$375.00 per month is payable on the 1st day of each month as well as \$29.00 per month for electricity, and there are no arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the

amount of \$400.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a 1 bedroom suite in a complex containing 16 units. The landlord is an employee and property manager of an affordable housing society who is the landlord, and the society has a board of directors.

The landlord further testified that she served the tenant with a 1 Month Notice to End Tenancy for Cause on February 26, 2015 by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated February 26, 2015 and contains an expected date of vacancy of March 31, 2015. The reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed 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;
- 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 testified that with respect to an unreasonable number of occupants in the unit/site, a lot of traffic has been seen going to and from the rental unit, some of whom only stay in the doorway and then leave. The landlord has provided a copy of several security recordings and stated that the landlord and the board of directors deemed that the high level of traffic going to and from the rental unit was unreasonable based on viewing the security video over a 4 month period.

The landlord also testified that she has received a number of complaints from other tenants based on their concern of the amount of traffic. Some of the tenants are familiar with some of the guests of the tenant or had interactions with them and have spoken to the landlord about safety concerns. Staff members have also voiced safety concerns.

With respect to illegal activity the landlord testified that based on reports of other tenants, the landlord's and the board's own observations and the security video showing guests that the landlord and the board of directors are familiar with, the landlord believes that drug activity is taking place in the rental unit. Some of the guests are guests that frequented another rental unit within the complex, and that tenant was evicted. The landlord or other tenants have seen items being taken out of trunks of cars, and continued traffic going in and out of the rental unit. Other tenants have complained both orally and in writing, but have requested that they not be identified and

the landlord respects those wishes. The security camera footage contains times and dates and some of the footage shows incidents that other tenants complained about.

The landlord also testified that a part of the tenancy agreement is a Crime Free Housing Addendum, a copy of which has been provided

The landlord gave a letter to the tenant, by posting it to the door of the rental unit in December, 2014 after the landlord received a number of complaints. A copy of the letter has also been provided and it is dated December 22, 2014 and states, in part: "... We have also received reports regarding the number of people who attend your unit at various hours of the day and night. Upon review of the security camera tapes, we do see that there is a high level of traffic at your unit. It has also been reported that some of the visitors to your unit are purchasing illegal drugs. If this is correct, it is a violation of our crime free housing policy. Further complaints of this nature will put your tenancy at risk..." The letter also speaks to a report from another tenant (a resident) complaining that the tenant got angry when requested to leave the resident's rental unit, and a request that the tenant not attend that unit again.

The landlord also testified that a support worker has provided an email stating that other tenants had complained but refused to put it in writing. The landlord has provided a copy of the email from the support worker stating that some tenants refused to put their complaints in writing. The support worker is also an employee of the complex.

The landlord also specified that written complaints were received from other tenants on February 12, 2015; 2 letters on February 19, 2015; and another on February 21, 2015. Verbal complaints have been recorded on December 15, 2014; December 17, 2014; and January 6, 2015; as well as an email from a tenant received by the landlord on March 11, 2015; and a verbal complaint pertaining to activity at the rental unit and concerns about the tenant's guests.

The written complaint of February 12, 2015 speaks to many visitors at the rental unit, being the same people who frequented the unit of the tenant who was evicted. The document also describes incidents of people coming and going from the tenant's rental unit and concern of selling drugs.

The first written complaint of February 19, 2015 lists names, dates and times and states that the writer was uncomfortable with people on the property who are known to have connections to the drug culture in town, and that one of the individuals was previously evicted for drug use and some who frequented that rental unit now frequent the tenant's rental unit.

The other written complaint of February 19, 2015 also contains a date and time and states that the person had people over to visit and the tenant went to that unit and was asked to leave by the resident, and the tenant responded that the only reason she was there was to ask if one of the guests got what he was looking for.

The written complaint dated February 21, 2015 was from another tenant listing dates and times that a couple of individuals attended the tenant's rental unit at about 8:20 p.m. and stayed until 5 minutes to 3:00 in the morning. An argument ensued between the tenant, her brother and another person in the parking lot, and the writer was intimidated and therefore reluctant to put it in writing. The writer also spoke to another tenant about it.

The landlord also testified that a conviction is not necessary, however the *Residential Tenancy Act* requires the landlord to establish 50% likelihood that there is illegal activity going on in the rental unit. Based on the activity shown on the security video and the complaints of other tenants, the landlord deemed there is something illegal going on in the rental unit by more than a 50% chance.

The landlord acknowledges that the tenant's evidence package contains a retraction of written complaints, but the landlord does not wish to identify what letters have been retracted to protect the identities of those who have complained.

The tenant testified that her brother was going through a difficult time and stayed with the tenant for several weeks commencing in late September, but the tenant couldn't have him stay longer because she had to tend to her mother who broke her foot. The tenant spent the month of December helping her mother to doctor appointments and looking for long-term care. Other family members have also visited the tenant.

The tenant also testified that she had been involved with a community resource and arthritis society, and currently volunteers on Mondays and sometimes on Fridays, and did so in December. The tenant suffers from pain due to osteoarthritis, fibromyalgia, and makes about 10 trips per week taking other tenants to the food bank. The tenant is one of few people in the complex who has a vehicle.

In December, the tenant was delivering phone books, which she has done every year, and had assistance by 2 other people, who are on the video provided by the landlord.

The facility has 14 people residing in it and 12 have written letters stating that they have no issues pertaining to the tenant, and one tenant has retracted his complaint in writing.

The tenant does not use, buy or sell illegal drugs, and has never been asked about pedestrian traffic to the rental unit, and denies receiving the landlord's letter dated December 22, 2014.

Closing Submissions of the landlord: The addendum to the tenancy agreement, which has been signed by the tenant states that in case of a conflict, the landlord will follow the addendum and based on that, the landlord relies on the evidence provided. The landlord believes illegal activity is going on. Based on the video, the items being passed around are not phone books. Although the tenant has letters written by other tenants, that is not what the landlord's evidence is based on.

Closing Submissions of the tenant's counsel: The matter is based on the amount of traffic to the rental unit but there is nothing whatsoever that remotely describes anything wrong, only day-to-day activity. Further, counsel questions the integrity of the video because there is no snow. The tenant has provided testimony of her busy life despite her illnesses. A 50% chance of illegal activity does not mean the landlord is entitled to issue a notice to end tenancy. The heavy traffic has been explained by the tenant; almost everyone relies on the tenant for transportation and some have signed letters on the tenant's behalf and another written complaint was retracted. The landlord is making a mountain out of a molehill. With respect to an unreasonable number of occupants, the landlord has not proven that an unreasonable number of people reside in the rental unit.

Analysis

Where a tenant disputes a 1 Month Notice to End Tenancy for Cause, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, I have reviewed the notice and find that it is in the approved form and that it contains information required by the *Act*. I also accept that it was served on the tenant on February 26, 2015 by posting it to the door of the rental unit. The tenant disputed the notice on March 3, 2015, which I find is within the 10 days as required by the *Act*.

With respect to the reasons for issuing the notice, dealing with them in the order that they appear on the notice,

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

Webster's Dictionary describes "occupants" as:

1. Someone who lives at a particular place for a prolonged period or who was born there;
2. One who occupies, or takes possession, one who has the actual use or possession, or is in possession, of a thing,
3. He that occupies or takes possession, he that has possession;
4. And, with respect to real estate, a person who owns or rents a house.

In this case, I am not satisfied that the landlord has established an unreasonable number of occupants residing in the rental unit.

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord

I have read the letters provided by the parties and note that all of the letters provided in the tenant's evidence are signed and witnessed and are letters of other residents in the complex in a form letter that says: "... (tenant) has to my knowledge and experience never interfered with or disturbed me. As well, she has not adversely effected my quiet enjoyment, serenity, safety or physical well-being." That is disputed by one neighbour; the letter contained in the landlord's evidence states that the person was asked by the tenant to sign a piece of paper saying the tenant hasn't been bothering the person, and the person signed it to ease her stress, but that she has in fact been bothering the writer quite a lot. The letter also states that the tenant has made the writer feel concerned for safety, and describes 2 specific incidents which I find to be quite disturbing, and minor incidents, such as knocking on the writer's door in the middle of the night and noise from within the tenant's apartment. Another letter provided in the landlord's evidence states that the writer refused the tenant's request to sign a paper. Another states that the tenant has been going to people's door who don't know her, getting them to sign papers, and the tenant doesn't understand that she's bothering them by asking for their signatures. An email from the Residential Support Worker states that several residents have come to her with concerns regarding the traffic in and out of the tenant's unit, and one mentioned feeling unsafe, but that the tenant had advised that the people who are visiting are doing so without the tenant's permission. I do not accept that obtaining signatures of other residents on a form letter constitute any reasonable evidence that opposes the letters provided by the landlord.

In the circumstances, I am satisfied that the tenant or persons permitted on the property by the tenant have significantly interfered with or unreasonably disturbed other occupants, and the landlord had cause to issue the notice.

Having found that the landlord had cause to issue the notice based on that reason, I find it unnecessary to comment further on the evidence respecting the remaining reasons for issuing it.

The landlord did not make an oral request for an Order of Possession during the hearing.

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: April 16, 2015

Residential Tenancy Branch

