



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA GROUP OF SOCIETIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated April 16, 2015, received by her the next day. Her application was not made until May 19, 2015 and she seeks more time to apply.

The Notice claims that the tenant or a person permitted on the property by her has significantly interfered with or unreasonably disturbed another occupant or the landlord. It also claims that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord. Thirdly, the Notice claims that the tenant has breached a material term of the tenancy agreement and has failed to correct it within a reasonable time after being given written notice to do so.

Issue(s) to be Decided

Should the tenant be granted an extension of time to apply to cancel the Notice? If so, does the relevant evidence presented during the hearing show on a balance of probabilities that any of the grounds listed in the Notice have been substantiated.

Background and Evidence

The rental unit is three bedroom apartment in a subsidized housing complex. The tenancy started in September 2012.

The current monthly rent is an "Average Market Rent" that the parties agree is currently \$850.00. The rent is adjusted downward based on the income of the occupants, but the tenant has not provided the proof of financial resources of the occupants, as required by the written tenancy agreement, to obtain that downward adjustment.

The landlord holds a \$318.00 security deposit.

Section 47(5) of the *Residential Tenancy Act* (the “Act”) requires that a tenant served with a one month Notice to End Tenancy for cause must make an application to dispute it within ten days after receiving it. That requirement is stated in the Notice itself.

Section 66(1) permits an extension of that time limit in exceptional circumstances.

The tenant says she did not read that portion of the Notice and that she was preoccupied with deaths in the family and attending funerals after she received the Notice.

The landlord opposes the extension of any time for the tenant to make this application, saying that it had trouble serving an evidence package in June. It acknowledges that April and May rent have been paid in full.

At hearing the extension of time was granted. The fact that the tenant did not read the ten day warning in the Notice is not an excuse, however her particular personal circumstances may be seen as being “exceptional.” To deny the extension would result in an automatic end to the tenancy and her eviction without any hearing. Most importantly, the landlord has not shown that it would be prejudiced in any way by the extension.

In support of the Notice, the landlord’s representative Ms. H. testifies that the tenant has failed to provide the information about the financial resources of the occupants of the rental unit. The tenancy agreement mandates that the tenant provide that information.

Despite various written reminders and a final warning letter in April 2015 the tenant has failed to comply.

Ms. H. refers to letters to the tenant from June 2014, regarding complaints of a physical fight between the tenant and another tenant, and from January 2015 regarding “reports of a disturbance” that was said to originate from the tenant’s rental unit . It appears the police attended on both occasions.

Ms. H. testifies that on April 16, 2015 there was another fight involving the tenant and so the eviction Notice was issued.

Ms. H. testifies that the landlord has letters of complaint about the tenant from other tenants. She did not file any of the letters as evidence or provide the tenant with copies because, she says, she is concerned about retribution or retaliation from this tenant against the complainants should their identities be disclosed.

In response, the tenant says that the cause of all the fights is another tenant who beat her.

She wrote her own complaint to the landlord after the 2014 incident. She says the other tenant has convinced the other women in the complex to be against her.

Analysis

The landlord did not adduce any evidence of “illegal” activity by the tenant and so that ground in the Notice is unsubstantiated.

The landlord has not shown that the tenant has breached a “material term” of the tenancy agreement by failing to provide required financial information.

Residential Tenancy Policy Guideline 8, “Unconscionable and Material Terms” defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. In this case, the parties have clearly set out in the tenancy agreement the consequences if the tenant fails to provide the required financial information. Clause 6 of the agreement states,

Failure to provide this [*financial*] information in a form acceptable to the Landlord will result in the Tenant having to pay the Average Market Rent . . .

The parties have agreed on the consequences and the landlord is not a liberty to argue that a failure to provide the financial information is a ground to end the tenancy.

The evidence shows that there has been trouble around this tenant. There was a fight in 2014, complaints of noise disturbance in January of this year and another fight in April.

The ending of a tenancy is a very serious matter. In the case of an eviction Notice claiming that a tenant or invitee has significantly interfered with or unreasonably disturbed another occupant, the onus is on the landlord to demonstrate with solid, cogent evidence not only that the complained of conduct occurred but also that it significantly interfered with or unreasonably disturbed another occupant.

It is not clear who started either fight or whether either of the participants was merely defending herself. The landlord has not presented evidence to confirm that any other occupant has been significantly interfered with or unreasonably disturbed.

There is no evidence from the other fight participant. There is no evidence from any noise complainant stating that he or she was significantly interfered with or unreasonably disturbed. Without that evidence all that remains is speculation. A tenant will not be evicted based on speculation.

A landlord is entitled to protect the identity of a complainant. Indeed, this adjudicative body will, itself, seek to ensure “informer privilege” in appropriate circumstances. However, when matters

proceed to the adjudicative stage; to a dispute resolution hearing and where a complainant's evidence is sole and decisive evidence, there is no anonymity. The tenant is entitled to challenge the accusations forming the basis of the eviction notice. She is entitled to know the particulars of the accusations and the source of the accusations to fairly mount any challenge to them.

In result, I grant the tenant's application and set aside the Notice.

It must be stated that this decision is not a "not guilty" verdict for the tenant. She may well have given good cause to be evicted. The fact of the matter is that it has not been adequately proved at this hearing.

Conclusion

The application is allowed. The Notice to End Tenancy dated April 16, 2015 is hereby cancelled.

This decision was rendered orally at hearing and 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: July 03, 2015

Residential Tenancy Branch

