



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants for an order setting aside a 1 Month Notice to End Tenancy for Cause. All parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Does the landlord have sufficient grounds to end this tenancy?

Background and Evidence

This month-to-month tenancy commenced June 1, 2015. The monthly rent of \$710.00 is due on the first day of the month. The tenants paid a security deposit of \$355.00. The rental unit is one of six apartments located on three floors.

On June 30, 2015, the landlord issued and personally served a 1 Month Notice to End Tenancy for Cause. The effective date of the notice was July 31, 2015. The tenants filed this application for dispute resolution on July 9, 2015, within the ten day time limit for doing so.

The grounds stated on the notice were:

- Tenant or 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.

The landlord and the resident manager both testified that the conflict is with the male tenant only; they have no complaints about the female tenant, are able to talk to her, and find her to be co-operative.

The landlord's complaints about the male tenant are threefold:

- He does not keep the front door locked, even though that is necessary for the security of the building, and conversely, he kept locking the basement fire door event after he was advised that doing so caused inconvenience to the tenant below them. The landlord and the resident manager both gave evidence that they spoke to the male tenant about this several times; finally the landlord removed the lock altogether.
- The building is a non-smoking building. The male tenant smokes on the door step and interferes with people going in and out of the building. Although the landlord has asked the tenants to smoke in the parking lot the male tenant continues to smoke on the doorstep. Because he leaves the front door open his smoke wafts back into the building. The female tenant smokes in the parking lot as requested.
- The tenants are up at all hours of the day and night which disturbs the tenant below.

The person who lives below the tenants submitted a very detailed letter I which she relates that:

- The tenants were noisy for the first few weeks of their tenancy, slamming drawers and yelling. She complained to the resident manager who spoke to the tenants. There was a reduction in the noise after midnight.
- The male tenant kept locking the fire door, which is not only her fire escape but is her only way upstairs to check her mail and to talk to the property manager. She described an incident on July 9 where she had to go around the building to get to the mail box because the fire door was locked. When she got to the front the male tenant was sitting on the steps with the front door open. She unlocked the fire door to go back to her unit. Before she got there she heard the door being locked again. She went back and banged loudly on the fire door. When the male tenant opened the door she told him it was not to be locked. He responded with "Well why does it have a lock on it then?"
- The male tenant smokes on the door step whenever the resident manager is away. When he smokes on the stops he leaves the front door open and the smoke enters her living room window. This causes her a problem because she is allergic to smoke. If the manager is at home, he sits on a chair placed in the parking lot, staring into her window while he smokes. This makes her very uncomfortable.

The written submission from the resident manager states that within the first two weeks of the tenancy every tenant in the building expressed concern about the male tenant's behaviour and the noise coming from their unit.

All of the landlord's witnesses referred to the male tenant's odd, unsocial and upsetting behaviour.

The female tenant testified that for the first two weeks of their tenancy they had no television. She also testified that they get up early in the morning and go to be early in the evening, so she questioned the allegation that they were causing noise at all hours of the day and night.

With regard to the smoking she testified that they specifically asked about the smoking arrangements before they moved in and were told they could smoke on the front steps as long as they kept the area clean. After they moved in they were told not to smoke on the steps because they were blocking access.

She testified that her husband is an amputee – his left leg has been removed below the knee and his right leg is following suit. He has a prosthetic for his left leg. Mobility, stair cases and standing are issues for him. When she is home she takes a chair to the parking lot for her husband but she is not always home.

With regard to the doors the female tenant agreed with the importance of that safety measure. She stated that when they moved in they did not understand that the front door was to be locked at all hours – which provision is included in the addendum to the tenancy agreement which was not given to them until some time after the start of their tenancy.

The male tenant testified that:

- None of these issues have been brought to their attention in a proper or timely manner.
- When they moved in the fire door had been locked so he thought that was the procedure. After the downstairs tenant yelled at him he never locked it again.
- The sign at the front door says the door must be locked at all times unless a tenant is in the vicinity. When he leaves the front door open he is always close by and he makes sure that no smoke goes into the building.
- They try to be quiet but because he is an amputee sometimes that is difficult.
- Even if others find his demeanour withdrawn or quiet it does not justify eviction.
- He suffers from chronic pain.
- Other residents of the building make noise or smoke in their units but he has not complained about them.

The tenants' rent is paid directly to the landlord by social services. The rents for August and September have been paid. The landlord has not given the tenants any form of receipt for those two payments.

Analysis

As explained on the Residential Tenancy Branch web site, where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant in writing that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy."

This is usually accomplished by the landlord giving the tenant a receipt that states the rent payment is being "accepted for use and occupancy only".

It makes no difference whether the landlord accepted a rent payment offered by the tenant for that month, cashed a post-dated cheque that was already in the landlord's possession, or received a payment from a third party, such as social assistance, for the rent. If the rent has been accepted for the month after the tenancy was to end, the landlord must give the tenant a receipt that makes it clear the rent is being accepted for "use and occupancy only" or the tenancy will usually be reinstated.

The landlord failed to advise the tenants in writing that the rent for August and September was being accepted for use and occupancy only and is therefore considered to have reinstated the tenancy. The tenants' application is granted. The 1 Month Notice to End Tenancy for Cause dated June 30, 2015, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

Although the tenancy has been continued that is only because the landlord failed to comply with a technicality I am satisfied that the male tenant has not been a good neighbour to the other residents of the building and I do not accept his explanations for certain events. For example, he says he did not know that the fire door should not be locked. However, the incident where the downstairs tenant yelled at him was July 9 – after the landlord had spoken to him about the need to leave the door unlocked and after he had been served with a 1 Month Notice to End Tenancy for Cause. I am

satisfied that he knew that the door should be left open but for reasons of his own, chose to continue locking it until the landlord removed his ability to do so.

The male tenant must understand that if he continues to ignore or defy the requests made to him, and fails to be more considerate of the other residents of the building, the landlord may serve a new notice to end tenancy. Of course, if the tenants dispute any new notice the landlord must be able to prove that the behaviour complained of is sufficient to end a tenancy.

Conclusion

The tenants' application is granted for the reasons set out above. The 1 Month Notice to End Tenancy for Cause dated June 30, 2015, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

As the tenants did not pay a fee to file this application no further order is required.

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: September 23, 2015

Residential Tenancy Branch

