



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GLEN MARKLE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy and for other considerations.

The Tenant's Advocate said her office served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on July 3, 2015. Based on the evidence of the Tenant's Advocate, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with the Landlord and the Tenant's Advocate. The Tenant's Advocate said the Tenant was to call in to the hearing but the Tenant did not join the hearing. The Tenant was represented by the Tenant's Advocate.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on February 15, 2015 as a month to month tenancy. Rent is \$680.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$340.00 on February 15, 2015.

Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated June 21, 2015 by posting the Notice on the Tenant's door on June 23, 2015. The Effective Vacancy Date on the Notice is July 31, 2015. The Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has significantly interfering with or unreasonably disturbing another tenant or the landlord and the Tenant has breached a material term of the tenancy agreement and has not corrected the breach in a reasonable period of time.

The Landlord said there were four incidents that lead to the issuing of the 1 Month Notice to End Tenancy. These incidents were a result of a guest of the Tenant, C.P. entering the rental complex and with the Tenant causing a disturbance and interfering with other tenants and the Landlord. The Landlord said he told the Tenant on a number of occasions that C.P. was band from the building and he issued a written caution to the Tenant on March 10, 2015 that C.P. was

not allowed in the building and that the Tenant's actions with C.P. may result in a 1 Month Eviction Notice. The incidents were as follows as indicted in complaint letters from other tenants:

- 1). March 8, 2015 M.M. a complaint letter was received by the Landlord that said the Tenant had woken M.M. up by throwing boxes and garbage off her balcony.
- 2). March 10, 2015 a written caution notice was issued to the Tenant about her guest C.P. and the noise incident on March 8, 2015.
- 3). April 6, 2015 another complaint letter was received from M.M. about the Tenant and her guest C.P. yelling at each other. The Tenant was on her balcony and C.P. was on the ground.
- 4). April 27, 2015 a complaint letter from S.S. was received by the Landlord indicating the Tenant's guest C.P. had visited the rental complex on a number of occasions and had woken up S.S. in the middle of the night by yelling and throwing stones at the Tenant's unit
- 5). June 21, 2015 another letter from S.S. indicating she was woken up by the Tenant and C.P. yelling and screaming at 3 o'clock in the morning. The tenant S.S. called the Landlord to deal with the situation. The Landlord said he went to the Tenant's unit and found the Tenant and her guest C.P. fighting so he called the police.
- 6). June 23, 2015 the Landlord posted a 1 Month Notice to End Tenancy for cause on the Tenant's door.

The Landlord said he has called the police a number of times and he understands other tenants have also called the police a number of times because of disturbances in the Tenant's rental unit. The Landlord said it is not fair to the other tenants to have all these problems with the Tenant and her guest.

Further the Landlord said the Tenant signed an addendum to the tenancy agreement that says that any incidents that involve the police may result in the Landlord making a Freedom of information search of the incident that may result in an eviction and that the Tenant cannot engage in any criminal activities which may also result in an eviction. The Landlord said there have been a number of incidents involving the police therefore the Tenant has breached a material term of the tenancy agreement and should be evicted.

The Tenant's Advocate said the clause in the addendum about any police incident is not valid and could be illegal as it is not allowed under the Residential Tenancy Act; therefore it is not a valid reason for a Notice to End Tenancy.

Further the Tenant's Advocate said the Tenant has received a restraining Order against C.P. and he has been stocking her, so he is not a welcome guest. The Tenant's Advocate said that it is her understanding that only one incident happened in the rental unit after the written caution given to the Tenant on March 10, 2015. That incident was in the rental unit because C.P. had cut his head open and the Tenant was giving him medical assistance. The Tenant's Advocate said that the other incidents the Landlord has referred to C.P. was outside the rental complex. The Tenant's Advocate said the Tenant is stress by these incidents with C.P. and that is why

she has received a restraining Order to keep C.P. away from the Tenant. The Tenant's Advocate said the Tenant is trying to correct the problem with C.P.

Further the Tenant's Advocate said the Tenant has submitted four witness letters to support the Tenant's position that these issues were not caused by her and she has not let these incidents happen willingly. C.P. is stocking her and she is trying to deal with a very difficult and bad situation. The Tenant's Advocate said as a result of this situation the Tenant is having health issues which are impairing her ability to fully deal with this situation. The Tenant's Advocate said the Tenant has not remembered all the dates and thing that have happened as clearly as if C.P. was not stocking her.

Further the Tenant's Advocate said the burden of proof is on the Landlord to prove the reasons on the 1 Month Notice to End Tenancy for Cause and the Landlord has not provided any evidence that C.P. was band from entry to the building and if this would even be legal without a court order. Therefore the Landlord's claim that C.P.'s entry to the building is grounds for an eviction is not supported or valid. The Tenant's Advocate said the Tenant has not breached a material term of the tenancy agreement. In addition the Tenant has taken steps by gaining a restraining Order against C.P. to correct the issue of C.P. entering the building, which also would satisfy the breach reason if it was valid.

The Tenant's Advocate continued to say that as C.P. will not be in the Tenant's unit in the future the Tenant has taken step to correct any noise incidents that may have been caused by C.P. The Tenant's Advocate said the Tenant is not responsible for C.P. actions outside the rental unit so the complaint letters the Landlord is using as evidence for the eviction are questionable. The Tenant's Advocate said the Landlord has not met the burden of proving the Tenant has significantly interfered with or unreasonably disturbed other tenants because the disturbances happened outside the rental complex.

The Tenant's Advocate said the Tenant's application is to cancel the Notice to End Tenancy and she summits that the Landlord does not have the evidence to support his claims.

The Tenant's Advocate said in closing that that the incidents with C.P. have been out of the Tenant's control and she is trying to correct the situation.

The Landlord said in closing that the incidents with C.P. are documented by complaint letters and there have been incidents with the Tenant alone. The Landlord said in the last two weeks the police were called and the Tenant was taken away to the drunk tank because she was intoxicated. The Landlord said the Tenant is responsible for her guests and C.P. was her guest because the Tenant let him into the building in possible violation of the restraining Order. The Landlord said it is not fair to the other tenants to let the Tenant continue to live in the rental complex as she has and the Landlord believes that she will continue to disturb and interfere with the other tenants.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. The Landlord has issued a caution letter to the Tenant about allowing C.P. into the building and has submitted complaint letter about incidents that involve the Tenant and C.P. The Tenant's Advocate said that the Tenant has received a restraining Order against C.P. so

the incidents with C.P. should stop. Both parties agreed that the incidents in this application all involved C.P. and the Tenant.

I accept the Tenant's Advocates testimony and the evidence submitted by the Tenant that there is a restraining Order restricting C.P.'s ability see the Tenant and enter the rental complex. Consequently I find the Tenant has corrected the potential breach of the tenancy agreement and therefore the reason of a breached tenancy agreement to support the Notice to End Tenancy is dismissed without leave to reapply.

With regard to the claims of interference and disturbing other tenants; Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Waking someone up late at night is inconvenient and acting poorly is grounds for a discussion about the behaviour required in a rental complex but it is not grounds for to end a tenancy.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date June 21, 2015 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement dated February 11, 2015.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated June 21, 2015 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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 01, 2015

Residential Tenancy Branch

