



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord submitted documentary evidence for this proceeding that was received by the tenant five days before the hearing, where the Rules of Procedure provide that the respondent is to serve evidence no less than seven days before the hearing. The tenant acknowledged reviewing the evidence and indicated that he wished to proceed as scheduled and I was satisfied the tenant was not unduly prejudiced by acceptance of a late submission. However, as pointed out by the tenant's advocate some of the landlord's submissions pertained to the tenant's mental state which I found irrelevant and prejudicial and I disregarded those submissions. Accordingly, the only submissions considered were those related to the events of August 15, 2015.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenancy commenced August 1, 2015 and the tenant is required to pay rent of \$475.00 on the 1st day of every month. On August 17, 2015 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause (the Notice) with a stated effective date of August 27, 2015. The Notice indicates the following reasons for ending the tenancy are that the:

- 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
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord

- put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park

The tenant filed to dispute the Notice within the time limit for doing so.

Both parties were in agreement that the landlord's reason for issuing the Notice pertains to events that took place at the residential property on the evening of August 15, 2015.

The landlord submitted that, based on a complaint she received from another tenant at the residential property, the tenant had a number of guests partying in his unit on the evening of August 15, 2015 and that one of those guests (referred to by initials JS) verbally abused the complainant tenant and then kicked in the door of that rental unit. The police were called to the property and JS was jailed. The door frame and lock of that rental unit had to be replaced and reinstalled for which the landlord has incurred costs. The landlord submitted that attempts to communicate with the tenant have been unsuccessful as he has been unwilling to discuss the situation further or pay for the damage.

The tenant did not dispute that JS kicked in the door in the other unit but claimed that JS is not his friend or an invited guest of his. The tenant was insistent on noting that three drunken people, including JS, showed up at his door uninvited. The tenant stated that he knew JS from several years ago and did not know the other two men JS was with. Despite the tenant being on probation with conditions that he not party and drink, he permitted the three drunken men to enter his unit and they ate a meal in his unit. The tenant stated the men became rowdy and began wrestling in his unit at which time he told them to leave. He claims that he had to eventually push them out of his unit. After they left his unit he was unaware of their conduct but he did notice the lights of police and ambulance outside a short time later. The tenant denied responsibility for the actions of JS after he removed JS from his unit. The tenant pointed out that the door that was kicked in is on the exterior of the building whereas his unit is in the interior.

It was undisputed that since August 15, 2015 there have been no other disturbances concerning the tenant that had been reported or noted by the landlord. However, the landlord expressed that she is concerned that the conduct may repeat itself given the tenant's reluctance to acknowledge responsibility for the events that transpired and the landlord's losses that resulted. I tried several times to impress upon the tenant that he has obligations under the Act with respect to persons he permits on the residential property. The tenant was highly reluctant to recognize that that the conduct of JS and the other drunken men may be of consequence to him or his tenancy. Eventually, the tenant stated that if JS were to show up at his door again, or any

other drunken person, he will not permit them entry. The tenant also stated that he will communicate with the landlord more openly in the future. The landlord remained highly skeptical that the tenant would fulfill his promises claiming that the tenant made several promises prior to entering into the tenancy but issues arose only two weeks later. The landlord is also of the belief that the tenant is more associated to JS than the tenant had stated.

The landlord indicated that she would be willing to wait until November 30, 2015 to regain possession of the rental unit so as to give the tenant a reasonable amount of time to vacate, provided the rent is paid for November.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where there are multiple reasons indicated on a Notice, the landlord need only establish that the tenancy should end for one of the stated reasons.

In this case, the landlord served the tenant with a Notice to End Tenancy as provided under section 47 of the Act. Upon review of the Notice I find that it is was sufficiently completed in the approved form although the stated effective date is incorrect. Where an effective date is incorrect it automatically changes to comply with the Act under section 53. Since the Notice was served on August 17, 2015 and the tenant is required to pay rent on the 1st day of every month, the earliest effective date would be September 30, 2015. Accordingly, the effective date has changed to read September 30, 2015 in this case.

With respect to the reasons indicated on the Notice, I provide the following findings and reasons.

The landlord confirmed that the tenant does not have any other occupants living in the rental unit other than himself and I find the first reason indicated on the Notice is not applicable. The other reasons indicated on the Notice are provided for under section 47(1)(d)(e) and (f). Below, I have reproduced the relevant portions with my emphasis added:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
- (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

The above sections refer to “residential property”. The meaning of residential property is inclusive and means not only a tenant’s rental unit but common areas and any part of the building or group of buildings and land where the rental unit is located.

In this case, I was presented undisputed evidence that JS had been in the tenant’s rental unit for a period of time on the evening of August 15, 2015, ate a meal in the tenant’s unit, kicked in the door of another rental unit while still on the residential property and taken away by the police. I find it is undeniable that this conduct by JS was unreasonably disturbing to the tenant of the rental unit where the door was kicked in.

While the tenant focused on his position that he had not invited JS to his unit prior to JS showing up at his door; I find that an invitation is not a determining factor. Rather, what must be established is that JS was “a person permitted on the residential property by the tenant”. The word “permitted” is not defined by the Act and I rely upon its ordinary meaning which is: *to allow to do something*.

Having heard that JS was allowed to enter the rental unit by the tenant, allowed to stay in the unit for approximately 40 minutes, allowed to have a meal in the rental unit with the tenant, I find that JS was “permitted” on the property by the tenant whether or not JS had been previously invited over by the tenant.

The tenant also focused on his submission that he was unaware of what JS did after leaving the tenant’s rental unit and that he was not responsible for JS’s actions after JS left his unit. However, I find the tenant’s position is inconsistent with the Act considering the sections of the Act reproduced above do not limit a tenant’s responsibilities for persons they permit on the property to the rental unit only.

I am also satisfied that kicking in the door of another tenant which resulted in a call to the police amounts to an “unreasonable disturbance” to that tenant. Considering this and that the landlord has an obligation under the Act to protect the quiet enjoyment of their other tenants I find the landlord was justified in issuing the Notice to End Tenancy.

In light of all of the above, I find the criteria of section 47(1)(d)(i) have been met in this case and I uphold the Notice.

Having upheld this Notice I find this tenancy to be at an end and the tenant must vacate the rental unit. Pursuant to section 55 of the Act, I grant the landlord’s request to regain possession of the rental unit no later than November 30, 2015 by providing the landlord with an Order of Possession effective at 1:00 p.m. on November 30, 2015.

Conclusion

The Notice to End Tenancy has been upheld and the tenant must vacate the rental unit. The landlord has been provided an Order of Possession effective November 30, 2015 as requested.

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: October 30, 2015

Residential Tenancy Branch

