



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, OLC, LRE, FF

Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on January 22, 2016,, an Order the landlord comply with the Act, an Order setting conditions on the landlord's right to enter the rental unit and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

The landlord confirmed receipt of the tenant's hearing documents and 71 plus 30 page evidence submissions. The tenant confirmed receipt of the landlord 98 page written submission.

Preliminary Matters

The landlords' witness was placed on mute at the start of the hearing.

The landlord had made a written request for a summons. This matter was not raised during the hearing by the landlord as the police witness the landlord wished to summons appeared at the hearing.

The application was amended, by agreement, to correct the street address of the rental unit.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on January 11, 2016 be cancelled or must the landlord be issued an Order of possession?

Must the landlord be Ordered to comply with the Act and must conditions be placed on the landlord's right to enter the rental unit?

Background and Evidence

The tenancy commenced on February 1, 2012. Rent is due on or before the first day of each month. A copy of the tenancy agreement was supplied as evidence. The 129 residential unit building also has two commercial units.

The landlord pointed out several clauses of the tenancy agreement, including clause 17; a portion of which reads:

...the tenant or the tenant's guests must not disturb, harass, or annoy another occupant of the residential property, the landlord or a neighbour....

Clause 13 of the tenancy agreement states that no other person other than those named in the agreement may reside in the rental unit. If a person stays in the unit beyond 14 days in a calendar year that person will be considered as a trespasser and the tenant will be found in breach of a material term of the tenancy agreement.

The landlord pointed to an addendum #1 signed by the tenant regarding illegal activity such as drugs, sex worker solicitation, gang activity, assault or threatened assault, firearms and other activities that could threaten the rights of occupants or the landlord.

Addendum #2 states that the tenant shall be the only occupant of the unit.

The landlord and the tenant agreed that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit effective February 29, 2016.

The reasons stated for the Notice to End Tenancy were that the 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 interest of another occupant or the landlord; and
- put the landlord's property at significant risk.

The Notice included a final reason:

- that the 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 served the tenant with the Notice and a letter dated January 11, 2016. The tenant was informed that the eviction was based on four significant events that had occurred since July 30, 2015 where the police had to attend. The tenant has been warned to stop disturbing and annoying occupants and the management.

The landlords' witness entered the hearing and was affirmed. The landlord led the witness through four events which the landlord described as significant. When the witness completed providing testimony and answering questions of the tenant and arbitrator he was excused from the hearing.

The landlord provided a copy of a July 28, 2015 Incident Report issued by the assistant manager. The employee set out what was described as harassment by the tenant for threatening to sue the landlord. The tenant had been in the office on that date to complain about traffic and safety issues and said he would picket the area. When suggestions were made to the tenant he "loudly claimed" he was going to proceed with a lawsuit.

On July 30, 2015 the tenant was issued a letter entitled "*First Eviction Warning for Cause – Breach of Conduct – Verbal Threats.*" The letter indicated the landlord had talked with the tenant on three occasions that week to discuss concerns over safety in the driveway. The tenant was reminded the area is posted. The tenant was reminded that if he has concerns they must be placed in writing using the appropriate form; a copy of which was attached. The landlord stated that verbal threats were not acceptable and that the tenant had made previous threats to the staff member that he was going to go to his lawyer and picket the site. The tenant as reminded he must not yell at staff.

The landlord said a significant event occurred on November 18, 2015. The tenant had an altercation with an individual who works in the area who the landlord describes as a commercial tenant of the building. The officer confirmed that it is alleged the tenant threatened to spray paint the neighbours truck. The officer said that each of the two parties involved in the altercation have filed complaints against the other. No charges have yet to be laid. The officer was reporting what he discerned from the police reports made at the time. The landlord said that when the tenant approached the neighbour, across the street, that person then followed the tenant on to the residential property. Even though charges do not appear to have been issued the landlord said that the crime free addendum signed by the tenant is meant to prevent this kind of altercation from occurring on the property.

A November 20, 2015 letter was issued to the tenant and supplied as evidence. The letter is entitled "*Second Eviction Warning for Cause – Breach of Conduct – Threats to Neighbours.*" The letter sets out the incident referenced in the July 30, 2015 warning

letter issued to the tenant. The letters alleges that a neighbour has reported that the tenant threatened him while he parked in the loading zone. The tenant had said he would vandalize the truck.

The landlord said that on November 25, 2015 another significant event occurred. The landlord had issued Notice of entry for all 129 units in the building. The annual fire safety inspections were scheduled to be completed. A copy of the Notice of entry was supplied as evidence. The Notice indicated that entries would commence 8:30 a.m. The landlord and the fire prevention company would be entering units for the annual inspection. A check of general condition of the units was also to take place. The witness and the landlord were present at the tenants' unit when entry was attempted. The witness confirmed that when the landlord knocked on the tenants' door he answered but denied entry. The tenant told the landlord that he would close the door the landlord could enter using the key, but that the tenant was not giving permission for entry. The officer asked the tenant if they could enter and the tenant replied no, but said they could use their key to enter. The police and landlord then used the key to open the door, entered and carried out the inspection.

The landlord pointed to a letter issued by the tenant in which he requested payment of a \$500.00 levy for entry to his rental unit. The tenant had denied access and access was only gained after following the tenants' instruction to use a key for entry.

Another event described as significant by the landlord occurred on December 6, 2015. There was no dispute that the tenant contacted the police with a request to have an individual removed from his rental unit. The tenant supplied a copy of the police department general occurrence report dated December 6, 2015.

On December 11, 2015 a third warning letter was issued to the tenant, entitled "*Third Eviction Warning for Cause – Breach of Conduct – Police Incident on December 6.*" The letter states that neighbours reported police attendance at the tenants' rental unit and that the person being removed was mentioned as a roommate who was not on the lease and that he was no longer welcomed by the tenant. This disturbance was found to be a breach of conduct. The landlord pointed out that disturbance, noise and annoyance caused supported eviction.

The landlord said the Notice is supported by the presence of an unapproved occupant in the tenants' rental unit for a two month period of time. The landlord said that the tenant claims not to have had a roommate living in the unit but the police report supplied as evidence indicates that on December 6, 2015 the person the tenant wished to have removed from his unit had been living in his unit for two months. The witness confirmed the contents of the police report; he was not the officer involved.

There had been previous evidence of the tenant having another person staying in the tenants' rental unit. The landlord does not know if this male person was staying in the unit after November 25, 2015.

The landlord pointed to a number of problems with the tenant making complaints. There is a clear policy and process for tenant complaints but the tenant refuses to follow that process by completing the required reports. Copies of the report and the process were supplied as evidence and have been given to the tenant. If the tenant has an issue with parking by the building he should be submitting a written report to the landlord, not taking matters into his own hands and causing disputes.

The landlord closed by saying that she is personally threatened by the tenant. One tenant has come forward to report that the tenant is angry and causes disruptions. That person feels the tenant is capable of vandalism.

The tenant responded to the July 30, 2015 warning letter by way of a letter issued on August 8, 2015. The tenant states he did not yell or make any threats or yell at a staff member. The tenant agrees he said he would speak to a lawyer but that was not meant as a threat. The tenants' letter does not address the issue of threatening to sue or call his lawyer, but states he has educated himself regarding the issues of safety.

The tenant responded confirming that on November 18, 2015 there was a confrontation outside of the building in relation to a neighbour who repeatedly parked in the 15 minute loading zone. This person works across the street in a commercial business. The parking causes problems for disabled people who live in the building. The person followed the tenant back on to the residential property, he went to the intercom at which point the tenant provided that person with his contact information. The tenant said he threatened to mark the neighbours' ties with paint; he did not threaten to spray paint the vehicle.

On November 23, 2015 the tenant wrote the landlord; a copy of the letter was supplied as evidence. The tenant rejected the landlord's warning issued on November 20, 2015. The tenant said this person involved in the confrontation was not a neighbour.

The tenant did not deny that he told the landlord not to enter his rental unit for the fire inspection scheduled for November 25, 2015. The tenant said that the Notice of entry failed to meet the letter of section 29 of the act. The Notice did not provide a specific time of entry. A copy of the Notice supplied indicated entry would occur from 8:30 a.m. onward. The landlord did enter the unit and complete the necessary inspection.

The tenant supplied a copy of the general occurrence incident report issued as a result of his call to the police requesting assistance on December 6, 2015. The tenant said that the report shows the person who he needed to have removed from his unit was a guest but that he had not lived with the tenant. That person had stayed perhaps 10 nights. The police report recorded the situation as a "joint occupancy" and relationship of "roommate" reported to have lived in the unit for two months. The tenant said he told the officers who attended that the person was not a roommate.

On December 26, 2015 the tenant wrote the landlord a letter in which he said that the person who was removed from his unit by the police had been in the building, without

having been given access by the tenant. The tenant described this person as a visitor with whom he had developed a friendly relationship. The tenant said that when a problem emerged with this person he was removed by the police and has not returned since. The tenant did not think that the neighbours had been disturbed.

I note that the tenant supplied significant written submissions that are not related to the reasons given on the Notice; including an assessment of street access and pedestrian concerns; scooter information, character reference and resume. Evidence that was not relevant to the matter before me was not considered.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reasons given on the Notice ending tenancy issued on January 11, 2015.

I find that the events described as significant are either not related to the tenancy or minor in nature or ended some time before the Notice was issued.

In relation to the threats that the tenant would speak to a lawyer and sue; there is no dispute that the tenant did make those comments. The person who said the tenant had responded "loudly" was not present to be questioned. I found the written report fails to set out behaviour that would support eviction. There was no notation that the tenant had yelled. The staff member may have felt threatened by the possibility of legal action; but that is the tenants' right. However; it is clear that the landlord has a well-developed complaint process. The tenant is wise to follow that process, by issuing concerns in writing in the approved form provided by the landlord. The tenant is now aware that he must refrain from making complaints directly to staff and that he must simply complete the required complaint form.

I find that the incident that occurred on November 18, 2015 had no relationship to the tenancy. The dispute was over public parking, with a neighbour who is not a tenant or resident of the building. Section 49 of the Act refers to another occupant or the landlord of the residential property; commercial tenants and neighbouring property occupants are not contemplated by the Act. When the neighbour followed the tenant on to the residential property he was not an invited guest of the tenants'. I find no basis for ending a tenancy over an incident between the tenant and a person who does not reside in the building as an occupant. There was no evidence before me that any occupant or the landlord were disturbed by this incident.

In relation to the attempted entry by the landlord on November 25, 2015, I find that the tenant complied with section 29 of the Act by allowing the landlord to use their own key to enter. If the tenant told the landlord he was denying access and then told the landlord to use their key; I find that this has the same effect as giving permission for entry. I find on that balance of probabilities that this is what occurred; both the landlord and the police officer who was present confirmed that the tenant said he was not giving permission for

entry but the landlord could use their key. The landlord did enter and I find this entry was made in accordance with the Act.

I note that the tenant believes the landlord must provide a specific time of entry on any notice issued. Section 29(b)(ii) provides that notice of entry must include:

*the date and the time of the entry, which **must be between 8 a.m. and 9 p.m.** unless the tenant otherwise agrees*

(Emphasis added)

In this case, when a landlord is attempting to enter many suites I find that a range of time; such as 8:30 to 12 noon, would be sufficient notice and provide appropriate Notice. A range of time is a commonly used approach when entry is required for repairs and service provision; otherwise entry could be rendered most difficult and obstruct the landlords' right to carryout necessary inspections and repairs. Therefore, I find that there is no evidence before me that would support restricting of the landlord's right to enter the rental unit. A landlord should issue notice that provides a reasonable range of time during which entry will occur.

A copy of section 29 of the Act is appended after the conclusion of this decision.

From the evidence before me I find that the tenant did have another person living with him up to December 06, 2015. This is confirmed by the police report that sets out what the tenant told he police on December 6, 2015; that the person who needed to be removed as a roommate and had lived with him for two months. This would form a breach of clause 13 of the tenancy agreement. Despite the wording of clause 13 when a landlord wishes to end a tenancy based on breach of a material term of a tenancy section 49(1) of the Act supports eviction for cause when:

(h) the tenant

*(i) has failed to comply with a material term, **and***

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so

There was no evidence before me that the landlord had issued the tenant written warning to remove the additional occupant. The landlord only issued the warning letter once the December 6, 2015 incident occurred and they became aware of the presence of that person. There was no evidence presented demonstrating that an occupant has returned to the unit. Therefore I find that the tenancy cannot end based on a breach of clause 13 of the tenancy agreement or the Act.

In relation to the general accusations made by the landlord, that she is threatened by the tenant, I find no basis for this in support of eviction. The tenant may make the landlord uncomfortable, but there was no evidence before me to support of the reasons given on the Notice. There was no illegal activity; the tenant was the person who called the police on December 6, 2015. The police accompanied the landlord for the safety inspections;

the presence of the police on that date was not due to any behaviour of the tenant. The initial incident is a police matter that I find has no relationship to the tenancy.

If the tenant has concerns regarding traffic in the area that is a matter he should take up with the city and police.

Therefore, I find that the reasons on the Notice ending tenancy issued on January 11, 2016 are not supported and that the Notice is of no force and effect; the Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

As the tenants' application has merit I find that the tenant may deduct the \$100.00 filing fee cost from the next months' rent due.

Conclusion

The two month Notice ending tenancy for cause issued on January 11, 2016 is cancelled.

The tenant is entitled to filing fee costs.

This decision is final and binding 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: March 10, 2016

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement

and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).