



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, MND, O, and FF

Introduction

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, a monetary Order for damage to the rental unit, and to recover the fee for filing an Application for Dispute Resolution.

The male Landlord stated that on February 02, 2016 the Landlord's Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The Tenant acknowledged receipt of these documents and I find that they have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for "other".

The Tenant stated that on February 02, 2016 the Tenant's Application for Dispute Resolution, the Notice of Hearing, and 21 pages of evidence submitted to the Residential Tenancy Branch were placed through the mail slot at the Landlord's business office. The male Landlord acknowledged receipt of these documents and I find that they have been served in accordance with section 89 of the *Act*.

On February 09, 2016 the Landlord submitted 15 pages of evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was personally served to the Tenant on February 22, 2016. The Tenant acknowledged receipt of this evidence, although she contends she found it posted on her door. As the Tenant acknowledges receiving the evidence, it was accepted as evidence for these proceedings.

On February 22, 2016 the Landlord submitted 3 pages of evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was personally served to the Tenant on February 22, 2016. The Tenant stated that none of these 3 documents were in the package of evidence she received and I therefore decline to accept it as evidence.

The Landlords were advised that during the hearing they have the right to refer to the 3 documents that were not accepted as evidence and that if, during the hearing, it appears they are relevant to the issues in dispute the hearing will be adjourned to provide the Landlord the opportunity to re-serve the documents. The documents were not discussed during the hearing and the hearing was, therefore, no adjourned for the purposes of re-serving the documents.

Both parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside or should the Landlords be granted an Order of Possession?

Are the Landlords entitled to a monetary Order?

Background and Evidence

The Landlords and the Tenant agree that:

- this tenancy began on January 12, 2016;
- the tenant agreed to pay rent of \$970.00 by the first day of each month;
- on January 25, 2015 the Landlord posted a One Month Notice to End Tenancy for Cause on the door of the rental unit;
- the One Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by February 25, 2016; and
- the reasons for ending the tenancy cited on the Notice to End Tenancy the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The male Landlord stated that the Landlords wish to end the tenancy, in part, because:

- the tenant gave her keys for the building to a male guest;
- on January 22, 2016 the male guest robbed a nearby gas station;
- two occupants of the residential complex observed the male running from the gas station to the residential complex;
- there was no altercation at the complex related to the robbery; and
- the police were present in the residential complex for approximately 12.5 hours awaiting a warrant to search the rental unit.

In response to this reason for ending the tenancy the Tenant stated that:

- she did not give her keys to her male guest;
- the male guest was visiting her and took her keys without her consent and/or knowledge;
- on January 22, 2016 the male guest robbed a nearby gas station;
- she did not know the guest was intending on robbing the gas station;
- when the male guest returned to her unit after the robbery he was "sweaty and messed up", so she asked him to leave;
- she allowed the police to enter her rental unit prior to getting a search warrant;
- after being in her rental unit for a brief period the police remained in the residential complex for approximately 12 hours awaiting a warrant to search the rental unit;
- the male guest is currently in jail;
- she does not intend to allow the male guest, who is a former boyfriend, back into the rental unit.

The male Landlord stated that the Landlords wish to end the tenancy, in part, because the Landlord has a video recording from January 21, 2016 that shows:

- the Tenant and the same male guest entering the rental unit through the side door of the residential complex;
- the male guest pointing at a power saw on the floor in a secure storage that the

- Tenant must pass through when she enters the complex through the side door;
- the male guest and the Tenant appear to speak about the power saw;
 - the male guest returning to the secure area approximately ten minutes later and taking the power saw;
 - the male guest exiting the side door with the power saw; and
 - the Tenant entering the secure area and leaving through the side door approximately one minute after the theft.

In response to this reason for ending the tenancy the Tenant stated that:

- she does not recall the male guest pointing at a power saw when they passed through this secure area;
- she did not discuss stealing the power saw with the male guest;
- she did not know the male guest had stolen the power saw;
- she did not exit the secure area one minute after the male guest took the power saw; and
- she was not aware of the theft until the landlord served her with the Landlord's Application for Dispute Resolution.

The male Landlord stated that the One Month Notice to End Tenancy for Cause was served, in part, because the Tenant or her guests have disturbed others by running in the hallway and/or smoking on the balcony.

The male Landlord stated that on January 16, 2016 he posted a caution notice on the door advising the Tenant he had received a complaint of running in the hallways in the early morning hours of January 14, 2016. I note that the notice the male Landlord stated was posted on January 16, 2016 was dated January 21, 2016. The Tenant stated that she did not receive this caution notice until she was served with the One Month Notice to End Tenancy on January 25, 2016.

The male Landlord stated that on January 20, 2016 he posted a caution notice on the door advising her he had received a complaint of smoking on the balcony on January 17, 2016. I note that the notice the male Landlord stated was posted on January 20, 2016 was dated January 21, 2016. The Tenant stated that she did not receive this caution notice until she was served with the One Month Notice to End Tenancy on January 25, 2016.

The male Landlord stated that on January 25, 2016 he posted a caution notice on the door advising her he had received complaints of shouting and loud noises on January 23, 2016. The Tenant stated that she did not receive this caution notice until she was served with the One Month Notice to End Tenancy on January 25, 2016.

The Landlords and the Tenant agree that the parties did not discuss the alleged disturbances and that the Landlord made no attempt to correct the Tenant's behaviour apart from issuing the caution notices. The Tenant stated that she was unaware that she was disturbing others until she received the caution notices on January 25, 2016.

The Landlords are seeking \$400.00 for the cost of the power saw taken by the guest of the Landlord.

Analysis

Section 47(1)(e)(ii) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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. On the basis of the undisputed evidence I find that the Landlord gave the Tenant a One Month Notice to End Tenancy which declares that the Landlord is ending the tenancy on the basis of section 47(1)(e)(ii) of the *Act*.

On the basis of the undisputed evidence, I find that on January 22, 2016 a guest of the Tenant left the rental unit with the Tenant's keys; that he robbed a nearby gas station; and that he subsequently returned to the rental unit. On the balance of probabilities I find it reasonable to conclude that it is likely the Tenant's guest engaged in illegal activity on January 22, 2016.

In order to end the tenancy in accordance with section 47(1)(e)(ii) of the *Act*, the Landlord must establish that this illegal act or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property. I find that the Landlord has not established that the robbery significantly affected the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property. In reaching this conclusion I was heavily influenced by the absence of any evidence to show that the male confronted any occupant of the residential complex before or after the robbery or that he made noise in the residential complex before or after the robbery.

Although I accept that the police were present in the rental unit for an extended period after the robbery, I cannot conclude that this significantly impacted the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property. I therefore cannot conclude that the Landlord has grounds to end this tenancy pursuant to section 47(1)(e)(ii) of the *Act* as a result of the robbery.

On the basis of the undisputed evidence, I find that on January 21, 2016 a guest of the Tenant took a power saw from a secure area of the residential complex. On the balance of probabilities I find it reasonable to conclude that it is likely the Tenant's guest engaged in illegal activity on January 21, 2016.

I find that the Landlord has not established that the theft of the saw significantly affected the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property. In reaching this conclusion I was heavily influenced by the absence of any evidence to show that the male confronted any occupant of the residential complex before or after the theft or that he made noise in the residential

complex before or after the robbery. I therefore cannot conclude that the Landlord has grounds to end this tenancy pursuant to section 47(1)(e)(ii) of the *Act* as a result of the robbery.

I specifically note that I do find that the theft of the power saw is grounds to end the tenancy pursuant to section 47(1)(e)(iii) of the *Act*, which authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant of the residential complex. I am unable to end the tenancy on the basis of the theft in these circumstances, however, as the Landlord has not served the Tenant with a One Month Notice to End Tenancy which declares that the Landlord is ending the tenancy on the basis of section 47(1)(e)(iii) of the *Act*.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. On the basis of the undisputed evidence I find that the Landlord gave the Tenant a One Month Notice to End Tenancy which declares that the Landlord is ending the tenancy on the basis of section 47(1)(d)(i) of the *Act*.

On the basis of the testimony of the male Landlord and in the absence of evidence to the contrary, I accept that prior to serving the One Month Notice to End Tenancy the Tenant and/or her guests have disturbed other occupants of the residential complex by being loud and/or by smoking on the balcony on at least three occasions. In the absence of evidence that establishes that these disturbances were highly unreasonable, however, I find that a landlord only has the right to end a tenancy for disturbances of this nature if a tenant continues to disturb others occupants after the Tenant has been advised that the behaviour is disturbing others.

On the basis of the undisputed testimony, I find that the parties did not discuss the disturbances prior to the Tenant being served with the One Month Notice to End Tenancy on January 25, 2016.

I favour the testimony of the Tenant, who stated that she did not receive any of the caution notices until she was served with the One Month Notice to End Tenancy on January 25, 2016, over the testimony of the male Landlord who stated that caution notices were posted on the Tenant's door on January 16, 2016 and January 20, 2016. I find that his evidence regarding of the posting of those notices was not credible, as the notices were dated January 21, 2016.

In the absence of evidence that clearly establishes that the Tenant continued to disturb others between the time she was notified of the disturbances and the date she was served with the One Month Notice to End Tenancy, I find that the Landlords did not have the right to end this tenancy on January 25, 2016, pursuant to section 47(1)(d)(i) of the *Act*.

I find that the Landlords has failed to establish that they had grounds to end this tenancy for the reasons outlined on the One Month Notice to End Tenancy that was served on January 25, 2016. I therefore dismiss the Landlords' application for an Order of Possession and I grant the Tenant's application to set aside the One Month Notice to End Tenancy.

Section 32(2) of the *Act* requires tenants to repair damage to the residential complex that is caused by the tenant or by guests of the tenant. There is nothing in the *Act* that requires a tenant to pay for tools that are stolen from the residential complex by their guest. I therefore do not have jurisdiction to order the Tenant to pay the Landlords for the power saw that was taken by her guest and I therefore dismiss the Landlords' claim for compensation for the cost of the saw. The Landlords retain the right to recover the cost of the saw from the individual who took it.

The Landlords have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

This tenancy shall continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 16, 2016

Residential Tenancy Branch