



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Immeubles Natalie Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, MNDC, O, FF

Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on February 23, 2016, compensation for damage or loss under the Act in the sum of \$25,000.00 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 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. The parties were able to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence provided.

The parties confirmed receipt of all documents within the required time limits.

Preliminary Matters

I considered the tenants' monetary claim made in the sum of \$25,000.00 for "pain and sorrow" and applied the Residential Tenancy Branch (RTB) Rules of Procedure, sections 2.3 and 6.2.

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues].

For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

I do not find that the monetary claim is related sufficiently to the matter of the end of the tenancy. Therefore, in accordance with the Rules of Procedure, the monetary claim is dismissed with leave to reapply.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on February 23, 2016 be cancelled or must the landlord be issued an Order of possession?

Background and Evidence

The tenancy commenced in July 2013; rent is due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The landlord and the tenant agreed that a one month Notice to end tenancy for cause was served to the tenant indicating that the tenant was required to vacate the rental unit on March 31, 2016. The Notice was issued on February 23, 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;
- 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; and
- the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable period of time after written notice to do so.

The landlord submitted copies of four letters issued to the tenant for breach of the tenancy agreement. The letters were dated May 29, 2015; June 3, 2015; February 23, 2016 and April 5, 2016. Each letter set out the alleged breaches, reference to the section of the Act, the tenancy agreement clause that was being breached and a warning of further action by the landlord. The landlord provided copies of proof of service documents and incident reports issued by the landlord.

The letters given to the tenant quoted part of clause 18 of the tenancy agreement: “*must not disturb or annoy other occupants of the residential property.*” The clause contained in the tenancy agreement supplied as evidence indicated, in part: “*must not disturb, harass, or annoy another occupant of the residential property, the*

landlord or a neighbour...”

The May 29, 2015 breach letter was issued as the result of allegations made regarding incidents on May 6, May 26 and May 27, 2015. J.B. stated that on May 6, 2015 he was dealing with another occupant who was agitated regarding possible eviction. The tenant came to the office and interfered with the managers' interaction with the other occupant, J.B. motioned for the tenant to leave and she got up and became aggressive. The tenant pointed her finger in J.B.'s face, told him to never again tell her what to do. Once the other occupant had left the tenant returned, put her hand out to shake J.B.'s hand and then pointed her finger at him and told him “never do that to me again.”

An incident report was issued by the landlord on May 26, 2015 after another occupant complained about the smell of marijuana coming from the tenants' unit. The occupant complained of noisy parties at the tenants' suite. The occupant had to close their windows due to the smell. The complainant name was redacted from the report.

On May 27, 2015 the tenant entered a suite next to hers, where J.B. was working. The tenant was upset about a letter given to another occupant of the building. The tenant accused J.B. of lying; she was waving her finger at J.B., acting aggressively to the point where J.B. became uncomfortable. The tenant said she would issue a complaint about J.B. The tenant left the unit; slammed the door; she was swearing, very angry and aggressive. J.B. said he felt intimidated by the tenants' language. The tenant emailed a complaint to the head office. That email was forwarded to the resident managers who were told head office would not respond and that the managers should communicate with the tenant in writing rather than through verbal communication.

On June 3, 2015 another breach letter was issued by the landlord; this letter appears to have been misdated as the proof of service document indicates the letter was served on July 22, 2015. The landlord alleged that on June 30, 2015 they had received a complaint regarding an incident that occurred on June 29, 2015. The complainant, R.P., another occupant of the building, attended the hearing to testify. The witness was affirmed. The tenant said that R.P. has a no contact order with her. R.P. confirmed that he had a no contact order, direct or indirect, with the tenant. The witness had asked his legal counsel if his testimony would place him in breach of his order and was assured it would not. R.P. confirmed that he had submitted a written statement that would duplicate the testimony he wished to provide. The tenant had a copy of that statement was prepared to respond. Therefore, in the interests of protecting the witness from any perceived breach of his no contact order I declined to hear his testimony and he left the hearing. The tenant was able to respond to the written statement.

R.P.'s written statement indicated that on June 29, 2015 the tenant swore at him as he passed her unit, outside. The statement indicated that the tenant said “one of

these days someone is going to knock that faggot off his pedestal.” R.P. then heard someone say “mom, stop it, he’s not doing anything.” The insults continued until R.P. was no longer within hearing distance. The witness did not understand why the tenant was behaving in this manner.

On February 23, 2016 a third breach of tenancy letter was issued to the tenant and was served with the Notice to end tenancy. The landlord alleged three incidents that had caused a disturbance to others. The breach letter set out reasons for the Notice. The tenant had party on December 5, with loud music and voices coming from the suite past 11:00 p.m. A second gathering was held during the holiday, when loud music, voices and the smell of marijuana were coming from the suite past 11:00 p.m. On February 21, 2015 it was reported that another gathering occurred, with loud music until 10:00 p.m. and voices coming from the unit past 11:00 p.m.

The compliant issued on December 5, 2016 was made by the resident managers, who wrote that they heard a man yell out, asking the tenant to “shut up.” The resident managers completed an incident report in relation to the February 21, 2016 allegation of music, stating they received two complaints from tenants in neighbouring suites.

The breach letter indicated that as this was the third breach of tenancy for the same cause the landlord was ending the tenancy by issuing the Notice.

On April 5, 2016, after the Notice ending tenancy was issued, a fourth letter of breach of tenancy was given to the tenant. This letter set out allegations regarding an incident with resident manager J.B. and a contract worker, O.L.

On April 4, 2016 another occupant of the building reported seeing the tenant and a friend had approached the manager in an aggressive manner. The tenant’s friend was swearing and making a scene in the lobby, outside of the manager’s office. The manager felt threatened.

Witness O.L. entered the hearing and was affirmed. On April 4, 2016 O.L., a casual worker issued a written report regarding an alleged incident, where the tenant reportedly entered the suite while he was working and was behaving in a threatening manner. O.L. was replacing dry wall in the tenants’ ceiling and said when the tenant entered the suite with a friend she started to complain about the managers; the tenants’ language was aggressive and made O.L. frightened. O.L. did leave the unit, to meet the manager and then returned to the tenant’s suite to retrieve his tools and clean up.

An employee of the landlord’s, S.D., entered the hearing to testify and was affirmed. This employee encountered the tenant, who was highly critical of the managers in her building.

S.B. said that the tenants’ behaviour has been difficult and that she has made it hard

for the managers to carry out their work. The managers do what they can to avoid encountering the tenant. She creates anxiety and stress. Even after the eviction Notice was given to the tenant she had another party at 5:50 p.m. where they were smoking marijuana and playing loud music.

The tenant responded to the landlords' submissions.

On May 6, 2015 the tenant went to introduce herself to the manager. The behaviour described by J.B. is untrue; the tenant did not point her finger or overreact.

The incident reported to have occurred on May 26, 2015 does not identify the complainant. No one came to the tenants' door and she does not recall what may have occurred. The tenant does have several friends who visit and they have medical marijuana licenses.

On May 27, 2015 the tenant went to the office to enquire about some personal safety issues and as the landlord had failed to issue a letter to R.P.; a person the tenant was concerned about, the tenant said she would go over J.B.'s head, to complain. The tenant did not slam the door or behave in the way described by J.B.

The tenant denied speaking to R.P. in the manner described. On June 29, 2015 the tenant was not at her rental unit and she would never have said the things alleged.

In relation to the gathering the tenant had on December 5, 2015; the tenant had told the landlord she was having people over. The gathering was quiet. The tenant supplied letters from several individuals who were present who describe the event as pleasant.

On February 21, 2016 the tenant had just returned from travelling; her daughter and friend were in the home. The tenant denied that any disturbance was caused; she arrived late in the afternoon and she did yell up to the unit, to ask for the keys.

The tenant said that O.L. was not being honest about what transpired on February 4, 2016. The tenant was upset but she did not speak directly to him. O.L. was in her suite, but she did not make any threats toward him and there was no reason for O.L. to feel uncomfortable. J.B. called the police who came to see the tenant the next day; it had been alleged the tenant had made threats. The police did not believe a threat existed.

The tenant said the landlord's submissions are not true; that she is a fair-minded person and that for the first four years of the tenancy she had no complaints made against her. The landlord took over the property in 2015.

Analysis

After considering all of the relevant 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. I have based this decision on the events alleged; leading up to the time the Notice was issued on February 23, 2016.

In relation to the events said to have occurred in May and June 2015, I find those allegations have some weight and that the tenant did cause disruptions and act inappropriately. I find on the balance of probabilities that the behaviour alleged on May 6 and 27, 2015 was disturbing and that the tenant interfered with the rights of the landlord. The tenant interfered with the landlords' right to deal with other occupants and behaved in a threatening and disturbing manner, by pointing her finger and swearing.

The tenant denied any wrong-doing; despite detailed submissions made by the landlord, describing the incidents. The landlord provided testimony that I found spontaneous and believable. I contrasted the landlords' testimony with that of the tenant and, on the balance of probabilities, preferred the landlord's testimony as more believable. The tenants' absolute denial of any conflict did not have the ring of truth.

The alleged comments made by the tenant to occupant R. P. regarding an interaction on June 29, 2015 were of concern. There is obviously some conflict occurring between the tenant and R.P. From the evidence before me I find it is likely that the tenant made comments; particularly given the detailed submission provided by R.P. in the written statement; where he indicates he heard a voice telling a mother (the tenant) to stop making those comments. I found that evidence convincing and not contrived.

I have compared the May to June 2015 incidents with those alleged to have occurred in December 2015 and on February 21, 2016. I found the tenants submission in relation to those three events believable. If the December 5, 2015 gathering had been so disturbing as to form the basis for eviction I would have expected the tenant to be notified at the time. The second event in December 2015 was not even detailed in the breach letter issued on February 23, 2016. It was not until the tenant had three gatherings at her home that the landlord gave her warning; which was accompanied by an eviction Notice. This leaves me to conclude that the events were not significant or unreasonable, but were minor in nature. If the events had been significant I would have expected the tenant to have been notified of the concern during some sort of investigation by the landlord. The first indication the tenant had that these events were an issue was when the eviction Notice was issued.

I have then focused on the allegations made in mid-2015 as the only possible cause for ending the tenancy. These events were much different in nature, compared to those alleged in December 2015 and February 2016.

After June 29, 2015 there did not appear to be any conflict or issues of a similar nature, right up to the time the eviction Notice was issued. There was a period of

almost eight months without any behaviour that I would find supports eviction for cause. From the evidence before me, I find that if there had been a pattern of behaviour occurring that might support the reasons on the Notice ending tenancy; I find that pattern ceased on June 28, 2015. There was no reoccurrence of similar behaviour up to the time the Notice was issued or any reason given as to why the landlord had not issued a Notice ending tenancy in mid-2015.

A delay of almost eight months after the June 28, 2015 incident, in issuing a Notice to end tenancy, fails to take into account the absence of any further issues of a similar nature during that extended period of time. This leads me to find that the reasons given on the Notice for eviction, outside of illegal activity, are not supported, due to the passage of time.

Residential Tenancy Branch policy #32 sets out cause for illegal activities. Policy suggests:

...it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

The tenancy agreement does not include a term that prohibits smoking. From the evidence before me I find that the allegations made in relation to smoking marijuana are minor and that no evidence was supplied that supports any significant impact on others. Further, the May 6, 2015 allegation was anonymous and the tenant was not provided with the opportunity to question that person. Therefore, I find that the Notice issued for the reason of illegal activity is reason is not supported.

I have not placed any weight on the allegations regarding the April 4, 2016 incident with O.L. and J.B. This occurred after the Notice had been issued and did not form part of the landlord's reason for the eviction Notice that was issued. That alleged incident may well form part of a future record of behaviour.

I did not place any weight on the testimony of S.D. I found that testimony failed to provide any substantive information related to the reasons given on the Notice.

Therefore, I find that the one month Notice to end tenancy for cause issued on February 23, 2016 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

As the tenants' application has merit I find pursuant to section 72 of the Act that the tenant is entitled to deduct the \$100.00 filing fee from the next months' rent due.

Conclusion

The one month Notice to end tenancy for cause issued on February 23, 2016 is of no

force and effect. The tenancy will continue until it is ended in accordance with the Act.

The tenant may deduct the \$100.00 filing fee from the next months' rent due.

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: April 25, 2016

Residential Tenancy Branch