



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47

The tenant and landlord participated in the conference call hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution, amendment to the tenants' application and hearing notice. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application, amendment and hearing notice.

The parties agreed that the landlord handed the tenant a 1 Month Notice to End Tenancy for Cause (the "Notice") on March 20, 2016. The reason cited in that Notice was 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. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Notice.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice to End Tenancy for Cause dismissed? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that this tenancy began on February 15, 2013 on a fixed term until August 15, 2013 at which time the tenancy continued on a month-to-month basis. Rent

in the amount of \$818.08 is payable on the first of each month. The tenant remitted \$397.50 for the security deposit at the start of the tenancy and \$405.03 for a pet deposit later in the tenancy. The tenant continues to reside in the rental unit.

The landlord testified to four separate incidents that led to the Notice. The landlord stated the first incident was reported by the neighbouring occupant of unit 208. The neighbour reported to the landlord that on February 20, 2015 she overheard a loud and noisy argument coming from the tenant's balcony. The landlord provided a copy of a breach letter dated February 23, 2015 that refers to this incident. The landlord explained sometime following this incident the occupant of unit 208 contacted the landlord and advised him the tenant had told her she "would regret making the report." Three days following this report, the occupant of unit 208 could not access her rental unit as the lock had been tampered with. The landlord paid a locksmith to repair the lock. The landlord stated he has no evidence the tenant committed this act, but alleged it was too coincidental. The landlord acknowledged he did not question the tenant at any time about this lock issue.

The landlord stated he received another report from the same neighbour that on June 8, 2015 there was extreme noise and banging coming from the tenant's rental unit and that police attended the unit. The landlord testified that he spoke to the tenant following this incident and the tenant told him it was a disagreement between him and his lady friend. The landlord has provided a copy of a caution notice issued to the tenant regarding this incident on June 8, 2015.

The landlord testified the third incident took place on January 28, 2016. The landlord described it as excessive yelling and shouting that disturbed the neighbours to the extent that the police were called and had to break the door to gain entry into the tenants unit. The landlord provided a copy of a breach letter dated January 31, 2016 that referenced this January 28, 2016 incident.

Finally, the landlord testified that in February of 2016 he received a noise complaint from the occupants of rental unit 209. The occupants of 209 told the landlord that on February 23, 2016 they overheard the tenant and his lady friend arguing in the hall followed by the sound of the fire alarm. In the landlord's absence, the landlord's daughter was contacted to attend the rental unit. Upon arrival the landlord's daughter found the attending fire department had already reset the alarm. The landlord provided a written statement from occupants of unit 209 describing the events of February 23, 2016. The landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant on March 20, 2016. The notice indicates an effective move-out-date of April 30, 2016.

The tenant denies tampering with unit 208 lock, but does not deny any of the other instances above. The tenant acknowledged that he had a female care giver that used to attend the rental unit. The tenant explained that he has rectified this situation by having the female caregiver remove all of her belongings. He further testified that he tried to sever his relationship with the care giver in December of 2015. The tenant testified that he did not let the caregiver into the rental unit during the February 2016 incident. The tenant explained that the care giver knew the access codes from her previous visits. The tenant acknowledged that he had given the care giver the access code some time ago. The tenant explained that following the February 23, 2016 incident he contacted the landlord to request the access codes be changed.

Analysis

A landlord may 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. The onus is on the landlord to prove the significant interference or unreasonable disturbance took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of written warning letters, witness statements and testimony regarding four separate incidents that led to the Notice being issued. The tenant did not disagree that these instances took place and that the instances each involved the care giver of the tenant. The tenant did not argue the severity of these instances nor the significant interference; rather he argued the situation had been rectified and the Notice should be cancelled.

I find the last instance of the tenant's care giver attending the unit and pulling the fire alarm constitutes an unreasonable disturbance to the other occupants of the rental building. In particular, the occupants of unit 209 were unreasonably disturbed by way of having to silence the alarm. Because they were unsuccessful in silencing the alarm, they along with the remaining occupants of the building had to endure the sounding alarm, until the fire department attended and shut it off. I find this unreasonable disturbance was a direct result of the tenant's care givers action.

The tenant's own testimony affirms the access code was given by him to the care giver and this in turn is how the care giver gained entry to the rental building. The tenant only notified the landlord after the fire alarm incident that the access code should be changed. I find the tenant was negligent in his responsibility to cease the care giver's access to the rental building. Accordingly, I find the care giver was permitted on the residential property by the tenant and unreasonably disturbed other occupants of the residential property. Therefore, I dismiss the tenant's application to cancel the Notice.

Section 55 of the Act establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

As the Notice complies in form and content and as the tenant's application has been dismissed I find that the landlord is entitled to an order of possession. I therefore grant an order of possession to the landlord effective April 30, 2016 at 1:00 p.m.

Conclusion

The tenant's application to cancel the Notice is dismissed.

An order of possession is granted to the landlord effective April 30, 2016 at 1:00 p.m.

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: April 27, 2016

Residential Tenancy Branch