



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for more time to apply to set aside a Notice to End Tenancy.

The Advocate for the Tenant stated that on May 10, 2016 the Application for Dispute Resolution, the Notice of Hearing, and one hand-written document the Tenant submitted with the Application for Dispute Resolution were personally delivered to the Landlord's business office. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 01, 2016 the Landlord submitted six pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on June 01, 2016. The Tenant acknowledged receiving this evidence on June 02, 2016 of this evidence and it was accepted as evidence for these proceedings. Although this evidence was not before me at the time of the hearing, I was able to locate the evidence prior to rendering a decision in this matter.

The 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?

Should the Tenant be granted more time to apply to set aside a Notice to End Tenancy for Cause?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on July 01, 2009;
- a One Month Notice to End Tenancy for Cause was personally served to the Tenant on April 22, 2016;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by May 31, 2016;
- the reason cited for ending the tenancy on the Notice to End Tenancy is 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; and
- rent has been paid for June of 2016.

The Tenant filed this Application for Dispute Resolution on May 06, 2016. She has applied for more time to apply the cancel a Notice of End Tenancy. In support of this application the Tenant stated that:

- she was admitted to the hospital on April 22, 2016, although she was released later that day;
- she had been under an enormous amount of stress;
- her advocate filed an Application for Dispute Resolution to dispute the Notice to End Tenancy on behalf of the Tenant;
- her advocate was unable to provide the Residential Tenancy Branch with proof of the Tenant's income for the purposes of a fee waiver;
- as the advocate was unable to provide proof of income the Residential Tenancy Branch deemed the Application abandoned; and
- she did not realize her original Application for Dispute Resolution until the deadline for filing the Application.

The Agent for the Landlord did not oppose the application for more time to apply to cancel the Notice of End Tenancy.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy because the Tenant's son, who periodically visits the Tenant, has disturbed other occupants in the residential complex on several occasions in April of 2016.

The Resident Manager was in a hospital waiting room during the hearing and his name was called before he finished giving evidence. He stated that:

- on April 01, 2016 an occupant of the residential complex who lives near the front entry reported that at approximately 11 p.m. someone was trying to "break into" the front door but he left prior to police arriving;
- on April 03, 2016 the same occupant reported that the same person was again trying to "break into" the front door but he left prior to police arriving;
- on April 09, 2016 the same occupant reported that the same person was trying to gain access to the building by buzzing several suites, swearing, and making

threatening comments;

- on April 09, 2016 the building manager responded to the report in time to see the Tenant's son enter her rental unit;
- on April 09, 2016 the Tenant's son willingly left the residential complex with the police;
- on April 20, 2016 the same occupant reported that the Tenant's son had property strewn about the lawn and was yelling up to the Tenant;
- on April 20, 2016 he responded to the report and determined that the Tenant's son had attempted to climb up the building to access the Tenant's rental unit;
- on April 20, 2016 the police arrived after the Tenant's son had gained access to the building; and
- on April 20, 2016 the police escorted the Tenant's son from the building.

The Landlord submitted a written statement from the Resident Manager which outlines the aforementioned incidents. In the written statement the Resident Manager also declared that on April 15, 2016 the same man was buzzing random people to let him in; that he banged on the Tenant's door until the Tenant let him in; and that the police escorted him from the building.

The Tenant stated that:

- she has no knowledge of her son being at the residential complex on April 01, 2016 or April 03, 2016;
- her son came to the residential complex on April 09, 2016 and attempted to contact her via the intercom;
- on April 09, 2016 she was slow to answer the intercom for medical reasons, so her son called up to her;
- on April 09, 2016 she provided her son with access to the building via the intercom;
- on April 09, 2016 the Resident Manager banged on her door and told her that her son was causing a disturbance;
- on April 09, 2016 she contacted the police as she was concerned about the behaviour of the Resident Manager;
- on April 09, 2016 the police attended;
- on April 09, 2016 her son left her rental unit shortly after the police left;
- on April 15, 2016 she returned home to find her son inside the residential complex;
- on April 15, 2016 she called 911 as her son needed medical attention;
- on April 15, 2016 both the ambulance and the police came to her rental unit and her son was transported to the hospital by the ambulance;
- on April 20, 2016 her son came to the residential complex to retrieve some personal property but she was concerned that she would be evicted if she let him into her rental unit;
- rather than providing him access to the building on April 20, 2016 she threw some of his property over the balcony;

- on April 20, 2016 he did attempt to climb the building to receive some of his property;
- on April 20, 2016 she eventually decided to provide her son with access to the building via the intercom; and
- on April 20, 2016 her son entered her rental unit with the police, she gave him his property, and he left with the police.

The Agent for the Landlord stated that on April 16, 2016 the Building Manager warned the Tenant about her son's behaviour. The Tenant stated that the Building Manager told her that she would be evicted if she allowed her son onto the property.

The Landlord and the Tenant agree that there have been no disturbances since April 20, 2016. The Agent for the Landlord stated that she is very concerned that the disturbances will continue if the One Month Notice to End Tenancy is set aside. The Tenant stated that she has spoken with her son about his behaviour and she is confident her son will not create further disturbances at the residential complex.

Analysis

Section 47(4) of the *Act* gives a tenant the right to dispute a One Month Notice to End Tenancy by filing an Application for Dispute Resolution within 10 days after the date the tenant receives the notice. As the Tenant received the One Month Notice to End Tenancy that is the subject of these proceedings on April 22, 2016, she had until May 01, 2016 to dispute the Notice. As the Tenant did not file this Application for Dispute Resolution until May 06, 2016, I find that she did not file it in accordance with section 47(4) of the *Act*.

Section 66(1) of the *Act* authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy in exceptional circumstances. I find that being admitted to the hospital on the day the Tenant received the One Month Notice to End Tenancy, the miscommunication between the Tenant and her advocate, and the need to prove financial need for the purposes of a fee waiver, when considered collectively, constitutes exceptional circumstances. I therefore grant the Tenant's application for more time to apply to set aside the Notice to End Tenancy for Cause.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the 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. I find that there are insufficient grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*.

On the basis of the report received by the Building Manager and in the absence of any evidence to the contrary, I accept that the Tenant's son caused a disturbance when he attempted to gain access to the residential complex on April 01, 2016 and April 03, 2016, but was unable to do so. On the basis of the testimony of the Tenant and in the

absence of evidence to the contrary, I accept that the Tenant was not aware of her son visiting the residential complex on those dates.

As the Tenant's son was not at the complex with the knowledge and consent of the Tenant on April 01, 2016 and April 03, 2016, I cannot conclude that she permitted him on the property on those dates. As she did not permit him on the property on April 01, 2016 or April 03, 2016 she cannot be held responsible for his actions on those dates.

On the basis of the report received by the Building Manager and in the absence of any evidence to the contrary, I accept that the Tenant's son caused a disturbance when he buzzed several suites in an attempt to gain access to the residential complex on April 09, 2016. On the basis of the testimony of the Tenant, I find that the Tenant has a medical condition that prevents her from answering her intercom in a timely manner and that the delay may have contributed to this disturbance.

I find that there is insignificant evidence to determine if the disturbance on April 09, 2016 was sufficient to end the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence from the occupant of the residential complex who reported the incidents. Without evidence from that individual I am unable to determine the duration or the intensity of the disturbance. While I accept that the police were called as a result of the incident, I am unable to determine whether the police were called as a result of a noise disturbance or because the complainant was concerned someone was attempting to break into the complex for an illegal purpose.

On the basis of the report received by the Building Manager and in the absence of any evidence to the contrary, I accept that the Tenant's son caused a disturbance when he gained access to the residential complex on April 15, 2016 by buzzing several occupants. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I accept that the Tenant's son was inside the residential complex when she arrived home on April 15, 2016, at which point she let him into her rental unit.

As the Tenant's son was not at the complex with the knowledge and consent of the Tenant on April 15, 2016, I cannot conclude that he was her guest at the time he was creating a disturbance. As the Tenant's son was not her guest when he was creating a disturbance on April 15, 2016 she cannot be held responsible for his actions on April 15, 2016, until such time as she permitted him access to her rental unit. I note that there is no evidence that the Tenant's son created a disturbance after the Tenant let him into her rental unit.

On the basis of the report received by the Building Manager and in the absence of any evidence to the contrary, I accept that the Tenant and her son caused a disturbance on April 20, 2016 when the son was calling up to the Tenant and the Tenant was throwing personal items to her son from her balcony.

On the basis of the Tenant's testimony that she understood she would be evicted if she allowed her son back onto the property. Although it was perhaps misguided, I find that

the Tenant acted reasonably when she initially threw her son's personal property over the balcony rather than providing him with access to the building. I find her decision to return his property in this manner was an attempt to prevent her son from coming into the building.

I find that the Tenant acted appropriately when she provided her son with access to the building on April 20, 2016. Given that the act of throwing property to her son was apparently causing a disturbance, I find that her decision to provide him with access to the building for the purposes of returning his property was reasonable and responsible. I note that the Tenant's son left the property shortly after receiving his personal property on April 20, 2016.

As the Landlord has failed to establish sufficient grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy.

The Tenant is cautioned that if her son creates further disturbances at the residential complex the Landlord may have grounds to end this tenancy.

Conclusion

The One Month Notice to End Tenancy that was served on April 22, 2016 is set aside. 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 *Residential Tenancy Act*.
Dated: June 09, 2016

Residential Tenancy Branch