



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EY PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

On March 21, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause dated May 30, 2016, ("the May Notice") be cancelled, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Tenant provided late documentary evidence that was not provided to the Landlord prior to hearing. The Landlord objected to the Tenant's late evidence being admitted and considered in this hearing. Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since the evidence is late and was not disclosed to the Landlord, I will not consider the Tenant's late documentary evidence in this hearing.

The Landlord provided a copy of a 1 Month Notice To End Tenancy For Cause dated April 18, 2016, ("the April Notice"). The April Notice states that the Tenant must move out of the rental unit on May 31, 2016. The Notice has hand writing on it that states, "Tenant's worker called and asked for 1 Month extension - another 1 Month Notice was issued on May 30, 2016." In the hearing, the Landlord testified that she issued the Tenant another 1 Month Notice to give the Tenant more time. She testified that the

Tenant's worker told her that the Tenant was looking for another place to live. The Landlord continued to accept rent past the effective date of the April Notice. The Landlord issued the May Notice on May 30, 2016.

I find that the Landlord's actions and testimony demonstrate that the Landlord has expressly waived or abandoned the April Notice. Therefore the Notice that is the subject of this hearing is the one dated May 30, 2016.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?
- Should the May Notice be cancelled?

Background and Evidence

Both parties testified that the tenancy commenced on February 1, 1996, as a month to month tenancy. Current rent in the amount of \$987.00 is due on the first day of each month. A copy of the tenancy agreement was provided by the Landlord which indicates that a security deposit of \$362.50 was paid to the Landlord.

The Landlord provided copies of the April Notice and the May Notice that were issued to the Tenant:

The Landlord selected the following reason for ending the tenancy in the May Notice:

Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

I note that the Landlord had listed the same cause in the April Notice.

The Landlord testified that there are ongoing issues with the Tenant regarding health and safety standards. The Landlord testified that they have concerns that the Tenant's mental state is such that she is unable to handle the care and maintenance of the rental unit. The Landlord testified that the police contacted the Landlord seeking access to the Tenant's suite and that it is not the Landlords role to allow this access.

The Landlord testified that she issued the May Notice to allow the Tenant more time to find a more suitable place to live. The Landlord testified that she was in contact with the Tenant's social worker M.H. who indicated that the Tenant was looking for another place to live. The Landlord testified that she offered the Tenant a bachelor unit in a different building.

The Landlord testified that she received a letter from a former roommate of the Tenant's W.S. who stated that he was concerned about her stability. The Landlord provided a copy of the letter written by the former roommate that is dated received on April 8, 2016. The Letter indicates that the roommate is very concerned about the Tenant's deteriorating mental state and liability that she would pose to the Landlord if she were left on her own.

The Landlord stated that the condition of the Tenant's unit presents a fire hazard. The Landlord stated that she has known the Tenant for many years and she has frequently been told to clean up. The Landlord states that the Tenant's bathroom is horrific. The Landlord states that other residents complain that the Tenant is letting street people in the building. The Landlord testified that she has issued written warnings to the Tenant in the past, but has not issued any written warnings recently. The Landlord did not indicate the subject of previous written warnings.

The Landlord provided documentary evidence of a caution letter sent to the Tenant on April 18, 2016. The letter indicates that on April 17, 2016, police were called to the Tenant's unit to deal with a family dispute.

The Landlord also provided documentary evidence of an incident report dated May 13, 2016. The Report indicates that on May 12, 2016, the police attended the residential property and asked the Landlord to open the Tenant's door because they needed to take the Tenant to the hospital for her shots.

The Landlord also provided documentary evidence of an incident report dated June 15, 2016. The report indicates that on June 12, 2016, the Landlord received a call at 9 PM from the Tenant inquiring about the removal of the roommates name from the front door buzzer. The report indicates that the Tenant called the Landlord about this again on June 15, 2016.

The Landlord has provided documentary evidence of a letter dated May 29, 2016, from other residents who live above the Tenant. The letter states that the residents are concerned with the Tenant's health issues and cleanliness. The letter also indicates that the residents have heard the Tenant screaming for help after being assaulted by her roommate W.S. and that the police are attending the Tenant's unit every few days. The letter states the residents feel that the Tenant needs a safer and healthier environment and they are frightened of the Tenant's roommate.

The Landlord has provided documentary evidence of a letter dated June 2, 2016, from a resident, H.R. The letter from H.R. states that the Police have attended the Tenant's unit 10 -12 times since April. The letter indicates there is yelling and screaming coming from the unit on a regular basis. The letter states that the resident has been in the Tenant's apartment and found it filthy and very smelly making it unpleasant to neighbouring occupants. The letter states that the resident is a hoarder and presents a fire risk.

The Landlord has provided documentary evidence of a letter dated June 5, 2016, from a resident, A.S. who states she was awoken repeatedly last night between 2 AM and 6 AM due to yelling and crying and banging coming from the Tenant's unit. The letter indicates that the constant disturbances from the Tenant's unit are very annoying and there is a terrible odour wafting up to their unit. The resident states that the Tenant goes through periods of loud chanting and singing that is disturbing.

In response, the Tenant's counsel submits that it is unclear whether the Landlord is trying to end the tenancy for issues regarding cleanliness or due to police activity. She submits that the Tenant was the victim of abuse from her co-Tenant. She submits that it was the Tenant who called the police for help, who responded and removed the Tenant's roommate W.S. She submits that the Tenant spent 5 weeks in a hospital care unit due to the abuse. The Tenant's counsel submits that the situation has been resolved because the roommate has moved out of the unit. She submits that the Tenant has not received any previous cautions from the Landlord and the Landlord issued the April Notice on the same day that the caution letter was issued.

The Tenant's counsel submits that there were only two incidents that involved the police. The first incident was to remove the Tenant's abusive partner, and the second incident was to take the Tenant to the hospital because she forgot to take her medication. The Tenant's counsel submits that the second incident was not a disturbance.

The Tenant's counsel submits that while the Tenant was in the hospital, the cleanliness of the unit fell because the Tenant's roommate W.S. is a poor housekeeper. The Tenant concedes that the rental unit was messy for a time, but the Tenant now has help to keep the rental unit clean. The Tenant's counsel submits that the Tenant has seen her doctor who confirms the Tenant's competency.

The Tenant's counsel submits that the Tenant lives in a 2 bedroom apartment in a desirable area and pays less than \$1,000.00 per month for rent. She submits that the Tenant has always paid her rent on time. She submits that the Landlord is trying to

evict the Tenant so that the rental unit can be rented for more money. The Tenant's counsel submits that the Landlord does not have cause to end the tenancy.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

A significant amount of the Landlord's evidence relates to the Tenant's cleanliness and competency to reside in the rental unit. The Landlord submits there are health and safety issues. She suggests the Tenant could present a fire hazard. However, the Landlord issued the Notice for the reason 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. As a result, I find this evidence does not support the Landlord's cause to end the tenancy.

The Tenant has lived in the rental unit for more than 20 years. I note that the documentary evidence of the letters of complaint from the other residents of the rental property were all written after the first Notice to end tenancy was issued. If the Tenant was disturbing the other residents to the degree that is alleged, I would expect that the residents would have made prior complaints to the Landlord. There is no documentary evidence of complaint letters from the other residents about the Tenant prior to the Notice being issued. There is no documentary evidence of incident reports created by the Landlord due to complaints received from other residents. The Landlord testified that she issued written warnings in the past but has not issued written warnings recently.

While the incident where police asked the Landlord to open the Tenant's door may have interfered or disturbed the Landlord, I find there is insufficient evidence to establish that the interference was significant or the disturbance was unreasonable. A Landlord does not have a right to quiet enjoyment.

While I acknowledge that the other residents may have been disturbed by the incident involving domestic abuse, I am satisfied that the cause of the disturbance has been eliminated when the roommate moved out. Further, I find that despite claims from the other residents in the residential property of multiple police visits there is no corroborating evidence to support these claims.

It seems contradictory that the Landlord is attempting to end the tenancy due to significant interference or unreasonable disturbance and yet she states she has offered the Tenant a rental unit in another building.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, I cancel both the April and May Notices.

The Tenant's application is successful. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The April and May Notices are cancelled.

The tenancy will continue until 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: July 18, 2016

Residential Tenancy Branch