



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BENCHMARK RENOVATIONS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on May 31, 2016.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on May 31, 2016, be cancelled?

Background and Evidence

The tenancy began on February 1, 2016.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2016.

The reason stated in the Notice was that the tenant or person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the landlord's property at significant risk; and

- tenant has caused extraordinary damage to the unit.

The landlord's agent testified that in April 2016, the window in the tenant's bathroom was smashed from the inside. The landlord stated they do not know how it was broken.

The landlord's agent testified that also in April 2016, the tenant's guest kicked a hole in the drywall.

The landlord's agent testified that they have been numerous noise complaints from the other renters and the neighbor. The agent stated that they have spoken to the tenant on several occasion. The agent could not provide any specific dates or times.

The landlord's agent testified that the tenant also assaulted another renter when the tenant pushed the other renter.

The tenant testified that they did not smash the bathroom window. The tenant stated that they have no idea how it was broken, but believes that the renter next door might have been involved.

The tenant testified that their guest did damage the bathroom drywall by kicking, and have taken responsibility for that damage. The tenant stated that they informed the landlord of the damage which was caused by their guest when they suffered from a mental health issue and had an episode. The tenant stated that as a result of their guest's behavior they contacted the police and had their guest escorted to the hospital for treatment.

The tenant testified that the building was built in the 1920 and the walls are very thin. The tenant stated they do not agree that they have caused any unreasonable disturbance to the other renters.

The tenant testified that they did not assault another renter by pushing. The tenant stated it was the other renter that pushed them.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the landlord's property at significant risk; and
- tenant has caused extraordinary damage to the unit.

In this case, neither party knew how the bathroom window was broken. The landlord provided no evidence, such as photographs or witness statements for my review or consideration. Therefore I cannot determine whether or not the damage was caused by the tenant or a guest of the tenant or if the damage was caused by another renter.

Further, the tenant has taken responsibility for the hole that was kicked in the bathroom drywall and it was the tenant who informed the landlord. However, that appears to be from an isolated incident due to a medical episode and it appears that hole was easily fixable. Further, there was no photograph evidence to prove the damage was extraordinary.

Although I accept the landlord has received noise complaints from other renters, the landlord was unable to provide any specific dates or times. None of the other renters provided witness statements or attended the hearing to provide testimony on unreasonable noise disturbance. Therefore, I cannot determine if the other occupants were unreasonably disturbed.

I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I grant the tenant's application and cancel the Notice. The tenancy will continue until legally ended in accordance with the Act.

Conclusion

The tenant's application to cancel the Notice, issued on May 31, 2016 is granted.

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 08, 2016

Residential Tenancy Branch