



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STONEFIELD LAND INSTITUTE
DECISION

Dispute Codes CNC, LAT, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy received June 27, 2016 and for an order authorizing him to change the locks to the rental unit.

The Notice alleges that; a) the tenant or someone permitted by him on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord, b) the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well being of another occupant, c) the tenant has cause extraordinary damage to the unit or property, and/or d) he has breached a material term of the tenancy agreement and not corrected it within a reasonable time after written notice to do so.

The landlord filed a 16 page set of documents in support of the Notice. The tenant says he did not receive them. The landlord proved that she had sent them by "xpresspost" to the tenant at the rental unit. Canada Post records show that the mail was delivered to the rental unit on July 28.

The tenant denies receiving the material. He says he does not reside at the rental unit but merely uses it as an office in conjunction with his business as an architectural technician. He notes that the address for delivery given by him on his application is an address different from that of the rental unit.

It was determined that the landlord would be permitted to adduce or make reference to her evidentiary material and it would be determined whether the presentation of any particular document would prejudice the tenant or require that the hearing be adjourned to permit him an opportunity to present evidence in response. That proved not to be necessary.

The landlord has submitted a Monetary Order Worksheet and an updated Worksheet in the belief that she could claim against the tenant for unpaid July and August rent at this hearing. She was informed that in order for an arbitrator to consider such a claim it necessary for her to bring her own application for dispute resolution.

Both parties were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other.

Issue(s) to be Decided

Has the landlord established good grounds for the Notice? Has the tenant established a valid reason for needing the locks to be changed?

Background and Evidence

The rental unit is a one bedroom condominium apartment. The tenancy started February 1, 2016 for a one year fixed term. The monthly rent is \$1720.00 due on the first of each month, in advance. The landlord holds an \$860.00 security deposit and an \$860.00 pet damage deposit.

The landlord says that over the evening of June 25 and the early morning of June 26, 2016, the police attended the rental unit three times in response to complaints about noise and commotion coming from a party in the rental unit.

She refers to the email sent by the tenant's neighbour in the next apartment. The email, dated just before one o'clock in the morning on June 26, 2016, from Ms. C.M. to the landlord Ms. E.S., states that she was "fed up" with putting up with the tenant's parties.

It states that she had called the police three times to quell the noise and commotion from the party at the tenant's rental unit. At the first police visit the noise stopped but as soon as the police left, the noise; loud music, screaming, banging on walls, floors and doors, resumed. Ms. E.S. states that her son could not sleep, she could not sleep and her dog was "traumatized" every three minutes by the shaking on the floors, walls and doors.

In a corresponding email, Ms. E.S. stated that each time the police left, the noise became louder.

The landlord testifies that she thinks people have been smoking in the rental unit because there have been complaints about the smell of cigarette and marijuana smoke in the building and there are cigarette butts on one of the tenant's window sills.

She says he has caused extraordinary damage because a potted plant in front of the entrance to the building had been knocked over and damaged, allegedly during or after one of the tenant's parties.

She says the tenant is not recycling his cans.

In light of the speculative nature of these two complaints, I did not require the tenant to respond to them.

In response to the smoking complaint, the tenant says that he does not smoke. He says he has not received “formal “complaints about the noise or other things. He did not deny the events outlined in Ms. C.M.’s emails.

The tenant says that in March some painters entered his suite without proper warning. He acknowledges that he permitted them to enter.

He says that because the law prohibits a landlord from charging a new tenant for a lock change at the start of the tenancy, he should be able to demand a lock change.

In response, the landlord notes that the previous tenant in the rental unit was her son and business partner. So even if the locks were changed, the landlord would have to be provided a key and, as a member of the business, her son, the previous tenant, would have access to that key.

Analysis

This decision was rendered orally after the hearing.

The landlord has not established that the tenant has caused “extraordinary damage” to anything. That ground for the Notice fails.

The landlord has not established that the tenant or his guests are smoking in the rental unit. That ground for the Notice fails.

The landlord has not presented evidence to show that the tenant has materially breached the tenancy agreement and has failed to correct the breach within a reasonable time after being given written notice to do so. That ground for the Notice fails.

The Notice in question was served on the tenant the day after the party the subject of Ms. C.M.’s email evidence. The tenant would clearly have know that the party and the disturbance it had obviously caused, resulting in three police attendances, was the culminating reason for the Notice.

The tenant admits to having a party. He does not deny the three police attendances.

None of his testimony detracts from the description of the impact the party had on his neighbour Ms. C.M. The statements made by Ms. C.M. in her emails may not have been properly provided to the tenant before the hearing. I make no determination about service

of the landlord's documents. However, Ms. C.M. could have attended the hearing and given the same evidence verbally without any required forewarning to the tenant of the content of her testimony. I consider her email evidence to be in the same category.

I find that the tenant or persons he permitted on to the premises unreasonably disturbed his neighbour and her son. I find that the landlord had good cause to issue the Notice.

The tenant's application to cancel the Notice is dismissed. As a result, this tenancy ended on July 31, 2016 by operation of the Notice.

I also dismiss the tenant's request for an order permitting him to change the locks to the premises. He did not negotiate that term with the landlord at the start of the hearing and there is reason justifying a change of locks now. In any event, this tenancy has ended.

Pursuant to s. 55 of the *Residential Tenancy Act*, the landlord is entitled to an order of possession in these circumstances.

An order of possession will accompany the landlord's copy of this decision.

Conclusion

The tenant's application is dismissed. The landlord will have an order of possession.

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: August 18, 2016

Residential Tenancy Branch