



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kajody Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord's agent also called 4 witnesses who each gave independent affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

During the course of the hearing the landlord's agent advised that evidentiary material had been sent to the Residential Tenancy Branch by another person on August 31, 2016 and a copy provided to the tenant, but that material was not received by me prior to the commencement of the hearing. The tenant advised that a copy was not provided to the tenant. I advised the parties that I would attempt to locate the evidentiary material, and it has now been received. However, the person who provided a copy to the tenant was not available to testify as to how and when the tenant may have received it. Since the tenant has denied receiving it and there is no direct evidence of how and when it was provided to the tenant, I decline to consider it. All other evidence has been reviewed and is considered in this Decision.

Also, at the commencement of the hearing, the tenant advised that the application for more time than prescribed to dispute a notice to end the tenancy was made in error, that no additional time is sought, and that portion of the tenant's application is withdrawn.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that she is acting as agent for the landlord, who is the manager of the complex (hereafter referred to as the landlord).

This month-to-month tenancy began on July 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$400.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment within a complex containing 13 units.

The landlord's agent further testified that on August 2, 2016 the tenant was personally served by the landlord with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated August 2, 2016 and contains an effective date of vacancy of August 31, 2016. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant has assigned or sublet the rental unit without the landlord's written consent.

With respect to the first and last reasons, the landlord's agent testified that the tenancy agreement provides for overnight visitors up to 14 days per year, but the tenant allowed her ex-husband to stay for 3 months. The landlord's agent read a clause in the tenancy agreement, as follows:

"Additional Occupants – only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above who, without the landlord's prior written consent resides in the rental unit or on the residential property in excess of 14 cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this agreement. If the tenant

anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this agreement, giving the landlord a right to end the tenancy on proper notice." The tenant's ex-spouse stayed in the rental unit from about the first week of March, 2016 and didn't leave until around the end of May. His vehicle was parked there all the time, and the tenant made reference to the fact that he had no place to go for awhile and she was letting him stay. The tenant's rent is paid by Social Services, and the landlord's agent called Social Services around the end of May and he left. The tenant asked the landlord's agent to confirm to Social Services that he had left, and the landlord's agent did so.

With respect to significant disturbances, the landlord's agent testified that the tenant had a party that lasted all night on July 30, 2016. There were friends of the tenant in the parking lot screaming, yelling and consuming alcohol until 4:30 a.m. and other residents complained. Vehicles were blocking the way for other tenants. The landlord's agent arrived at the rental complex with her son at 1:00 a.m. Other tenants had joined the party at the fire-pit, but not after midnight.

With respect to illegal activity, the landlord's agent refers to the guests of the tenant on July 30, 2016 consuming alcohol in the common areas of the complex which includes inside hallways and outside, porches, stairs and parking lot. Friends of the tenant wandered around the property drinking alcohol.

There were previous incidents of disturbances, but this was the straw that broke the camel's back. On August 29, 2016 it happened again, but not quite to the same extent.

The landlord's first witness (WO) testified that upon arriving at the rental complex at 1:00 a.m. he heard noises from outside, looked out and saw 3 people around the fire-pit: the tenant's sister, the tenant's sister's spouse, and another woman. The tenant's sister was so belligerently drunk and loud the witness could hear with the doors and windows of his apartment closed. She yelled till around 1:30 or 2:00 a.m.

The landlord's second witness (JS) testified that on July 30, 2016 he was at the fire-pit in the common area drinking coffee. The tenant told the witness that she had permission for guests to camp on the rental property from Friday to Sunday, and people were camping, drinking, and talking and singing loudly. The tenant also told the witness that she had reserved the fire pit so no one else was allowed to be there. Then the tenant, in the presence of her daughter and another gentleman started to get belligerent saying the witness could not be there. The witness finished his coffee and left the fire-pit around 11:30 p.m. The party continued until about 4:30 a.m. with drinking and loud

partying that kept the witness up. About a week later the landlord asked the witness to take down the fire-pit, which he did, despite the tenant's objection.

The landlord's third witness (TS) testified that she heard noises while watering flowers.

The landlord's fourth witness (MS) testified that a party at the fire-pit kept his family awake. Several times, the witness' spouse went out asking the people to be quiet and was basically told to shut up and go back to the witness' apartment. Then a strange fellow walked into the witness' apartment looking for the tenant, and the witness told him it was not the tenant's room and told him to leave.

The tenant testified that on February 19, 2016 her mother passed away and the tenant's ex-husband went to support her. He was in the rental unit for about 7 or 8 weeks, and bought a mobile home in the vicinity, and the landlord agreed verbally that he could stay until he took possession. The landlord told the ex-husband that if he didn't leave, the tenant would have to, and he left. The Ministry was also okay with the decision that he stay until possession date and so was the landlord. The tenant has never sublet the apartment and he didn't pay for his stay.

The landlord was aware that the tenant was having guests, but on the Saturday night only, July 30, 2016. Friends showed up on Thursday and had a 5th wheel, and were not in anyone's way. The tenant went to work at 7:00 a.m. and at 11:00 a.m. received a text from a friend saying that the landlord ordered them to leave.

On Saturday, the tenant worked until 3:00 p.m. and had some friends and her daughter visiting. They were drinking, and welcomed other tenants, some of whom joined. One of the tenants who was there was being belligerent so the tenant asked him to leave.

The tenant has not received any warnings; verbal or otherwise about her ex-husband being on the property or about the party or any other incidents. This is the only time there has been a problem, the tenant wasn't spoken to by anyone about it, and no one gave the tenant an opportunity to defend herself.

The tenant was given a note by another tenant which is dated September 6, 2016 from the landlord's agent addressed to a number of residents in the rental complex inviting them to attend this hearing. It also states that if they don't attend, their complaints in the future won't be dealt with by the landlord.

The tenant seeks an order cancelling the 1 Month Notice to End Tenancy for Cause.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act* which can include the reasons for issuing. I have reviewed the 1 Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*, other than the effective date of vacancy. The reasons for issuing it are in dispute.

The reasons are based on 2 issues: the ex-spouse staying longer than specified in the tenancy agreement; and disturbances affecting other tenants.

The tenant was quite frank about her testimony that the landlord told the tenant that the ex-spouse could stay until he took possession of his mobile home, and that the landlord told the ex-spouse that if he didn't leave, the tenant would have to. She also testified that the ex-spouse left, and the Ministry was informed, which is partly corroborated by the testimony of the landlord's agent. The tenant was served with the notice to end the tenancy on August 2, 2016, and the landlord's agent testified that the ex-spouse left around the end of May. I cannot fathom how a landlord could end a tenancy based on a breach of a material term of a tenancy agreement that was corrected months prior to issuing the notice.

The landlord's agent testified that the party at the fire-pit caused disturbances to other tenants in the complex and that incident was the straw that broke the camel's back. The tenant testified that there were no other incidents, and no evidence of that was provided for this hearing either by testimony or otherwise. The entire reasoning for issuing the notice is centered on the July 30, 2016 party, and no other evidence is before me. The tenant testified that there have been no warnings of any breach, no one has talked to her about the incident, and the landlord's agent did not dispute that, but expressed concern that the landlord has an obligation to act on disturbances for the rights of other tenants, and I agree. A landlord cannot sit idly by without doing something. The landlord's agent issued a notice to end the tenancy which was disputed by the tenant. With or without other tenants testifying as witnesses, the landlord's agent has done what she believed to be a landlord's obligation, but I am not satisfied that a single party is sufficient to end a tenancy, or that the landlord has established any other incidents or reasons to end the tenancy.

The notice to end the tenancy is cancelled and I order the tenant to comply with the *Residential Tenancy Act* by ensuring that her actions and the actions of her guests do not infringe on others' tenancies:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated August 2, 2016 is hereby cancelled and the tenancy continues.

I hereby order the tenant to ensure that the actions of the tenant and/or the tenant's guests do not infringe on the rights of other tenants, as per Section 28 of the *Residential Tenancy Act* as set out above.

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: September 20, 2016

Residential Tenancy Branch

