



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

On July 11, 2016, the Tenants submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause dated June 30, 2016, be cancelled.

The hearing proceeded as a teleconference. 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 Landlord provided late documentary evidence. The Tenant testified that she has had an opportunity to read and consider the Landlord's evidence and she does not object to the inclusion of the Landlord's evidence. Since the Tenant does not object to the inclusion of the Landlord's evidence, the Landlord's late documentary evidence is admitted into this hearing.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy commenced in September 2013, as a month to month tenancy. Current rent in the amount of \$700.00 is due on the first day of each month. The Tenant paid the Landlord a security deposit of \$250.00.

The Landlord testified that a 1 Month Notice To End Tenancy For Cause was served in person to the Tenants on June 30, 2016. The Landlord provided a copy of the 1 Month Notice To End Tenancy For Cause dated June 30, 2016, (the 1 Month Notice).

The Tenant H.M. testified that she received the 1 Month Notice from the Landlord.

In the 1 Month Notice, the Landlord selected the following reasons for ending the tenancy:

- *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.*
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
 - *Put the Landlord's property at significant risk.*
- *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 caused extraordinary damage to the unit/site property /park.*

The Landlord's agent submits that there is no written tenancy agreement between the parties.

The Landlord's agent N.K. testified that the on-site manager of the residential property reported that the Tenants have been verbally and physically abusive to him and to other residents. N.K. submits that the Tenants are disrespectful to other residents by swearing and threatening. N.K. submits that the Tenants are disrupting the quiet enjoyment of other the other residents.

The Landlord's agent N.K. submits that the Tenant J.W. was verbally physically abusive to another resident on June 10, 2016, due to an incident where a dog killed another resident's kitten. N.K. submits that the Tenant J.W. and an unidentified man went to the on-site manager's residence where the incident occurred.

The Landlord has provided documentary evidence from three other residents of the property who have provided written statements explaining what they observed on June 10, 2016. All three statements indicate that an argument ensued between the Tenant J.B., another man, and the on-site manager regarding a resident's dog that had killed a kitten.

The Landlord's agent submits that Tenant H.M. sent a threatening text message about the on-site manager that states "I'm going to f*****g kill him". The Landlord provided documentary evidence of a redacted police narrative report that indicates on June 15, 2016, the on-site manager attended the police detachment to report that (name redacted by police) had threatened him via text. The report indicates that (name redacted by police) was upset because the on-site manager would not evict the owner of a dog that killed a cat.

The Landlord has provided documentary evidence of a statement from A.M. a resident of unit #10 and #11. A.M. states that she got trapped in the laundry room by Tenant H.M. who called her a backstabber.

The Landlord's agent N.K. also submits that the tenancy agreement with the Tenants allows for two occupants but they have a third person living in their unit who is always there, and whose vehicle is always there. N.K. submits that the on-site manager has spoken to the Tenants about the Tenant's guest always being there.

The Landlord's agent N.K. also submits that the Tenants have a derelict vehicle on the property. The Landlord's agent N.K. submits that the amount of vehicles and debris is blocking access to other residents. The Landlord's agent testified that she is not aware whether or not the Landlord has sent the Tenants any letters regarding the debris on the property and she stated that she is not aware if having vehicles on the property or storing items on the property was a term or condition of the tenancy agreement. The Landlord has provided a document with black and white photographs showing a boat, vehicles, and trash at the Tenants unit.

In response to the Landlord's testimony and evidence, the Tenant H.M. testified that with respect to the incident on June 10, 2016 involving J.W., there was an argument but he was not involved in a physical fight. The Tenant testified that J.W. went to the on-site manager's residence because he wanted the dog that killed the kitten to be put on a leash. The Tenant H.M. stated that the other person that was with J.W. was the owner of the kitten killed by the dog and he was not a guest of the Tenants.

The Tenant H. M. testified that she did not send a text message that said "I'm going to f*****g kill him" and that J.W. also did not sent the text message. She testified that she does not know who sent the text message but it did not come from her number. She stated that she believes the text message may have come from a person named Jeff, who is not a guest of the Tenants.

The Tenant testified that she did speak to resident A.M. but A.M. was not trapped in the laundry room as alleged. She stated that she spoke to A.M. about the eviction outside of the laundry room and she asked her if she was a backstabber.

The Tenant testified that she acknowledges that the rent they pay is based on the number of occupants. She stated she would be required to pay more rent if there was another occupant. She testified that they have a guest who at times stays overnight. She testified that the guest stays overnight two nights per week. She testified that the vehicle the Landlord spoke about is registered to her and not the guest. The Tenant testified that the Landlord has never spoken to them about the guest staying at the unit.

The Tenant testified that they have cleaned up their rental property. She testified that they removed a car, washer and dryer, utility trailer. She testified that they now only have a 1 vehicle

and 1 boat. The Tenant testified that there is no term or condition in their tenancy agreement prohibiting them from storing these items on the property.

Section 13 of the Act requires that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Residential Tenancy Policy Guideline #8 Unconscionable and Material Terms states that to end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing that there is a problem; that the problem is a breach of a term of the tenancy agreement; that the problem be fixed by a deadline; and that if the problem is not fixed the tenancy will end.

Residential Tenancy Policy guideline #32 Illegal Activities states that the term “illegal activity” would include a serious violation of federal, provincial, or municipal law, whether or not it is an offence under the *Criminal Code*. The party alleging the illegal activity has the burden of proving that the illegal activity was illegal.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reasons to end the tenancy stated within the 1 Month Notice are valid. Based on the evidence and testimony before me, I make the following findings:

The Landlord did not present any witnesses, who observed the allegations of verbal and physical abuse on June 10, 2016, testify at the hearing. A significant amount of time passed between the incident occurring and the statements being written and provided to the Landlord's agent. The written statements are dated approximately 10 weeks after the alleged incident occurred. The statements indicate that there was a loud argument but the statements do not indicate that the Tenant J.W. was using physical force. In fact, the only evidence of physical force was on the part of another resident J.D. who states he punched the unknown man in the jaw. The evidence suggests that the unknown man was the most aggressive. I find there is insufficient evidence from the Landlord that the unknown man that was involved in the incident was a guest of the Tenant. I find that there is insufficient evidence from the Landlord that the Tenants have 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 or Jeopardize a lawful right or interest of another occupant or the Landlord.

In addition, I do not find the Tenants role in the incident on June 10, 2016, was substantial enough to find that he breached the covenant of quiet enjoyment. The Tenant went to the Landlord to deal with an incident where a resident's dog killed a cat and an argument ensued. Tenants have the right to quiet enjoyment but a Landlord does not have reciprocal right to quiet enjoyment. While the evidence establishes that other residents heard the argument on June 10, 2016, I find that the unidentified man was the aggressor, and I find the Tenants role in the

argument and any disturbance to the other residents is not serious enough to warrant ending the tenancy. In addition, there is insufficient evidence to establish who authored the text message.

I find that the Landlord has not established that the Tenants or person permitted on the property by the Tenants has significantly interfered with or unreasonably disturbed another occupant or the Landlord or seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Landlord alleges that the Tenants have allowed an unreasonable number of occupants in the unit. I find that the amount of rent is based on number of occupants. The Tenants may be permitted to have another occupant if the Tenants pay more rent. The Tenants are allowing a guest to reside at the rental unit two days per week. I find that having this guest on a regular basis may be a breach of the tenancy agreement; however, the Landlord did not issue the 1 Month Notice due to a breach of the tenancy agreement. I find that there is insufficient evidence from the Landlord that the Tenants have allowed an unreasonable number of occupants in the unit/site.

With respect to the allegation that the Tenants have caused extraordinary damage to the unit/site or property /park, there is insufficient evidence from the Landlord that the Tenants have caused extraordinary damage to the property. The Landlord provided photographs of a boat, vehicle, dryer and trash but did not testify that there was damage to the property. If the Landlord's allegation of damage relates to the Tenants derelict vehicles and debris on the property, I find that there is no term or condition that prohibited the Tenants from storing the vehicles and other items on the property. The Landlord did not prepare a written tenancy agreement which sets out the terms and conditions of the tenancy as required by section 13 of the Act. The Landlord's agent testified that she is not aware whether or not the Landlord has sent the Tenants any letters regarding the vehicles and debris on the property and she stated that she is not aware if having vehicles on the property, or storing items on the property, was a term or condition of the tenancy agreement.

I find that the Landlord has not provided sufficient testimony or evidence to support the reasons listed in the 1 Month Notice; therefore, I cancel the 1 Month Notice To End Tenancy For Cause dated June 30, 2016.

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

Conclusion

The Tenant's application is successful. The 1 Month Notice To End Tenancy For Cause date June 30, 2016, is 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: September 6, 2016

Residential Tenancy Branch