



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

This hearing deal with a tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* and a *1 Month Notice to End Tenancy for Cause*. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Except for the two Notices that were the subject of this dispute, neither party provided written submissions or evidence prior to the hearing. Accordingly, this decision is based upon verbal testimony only.

At the commencement of the hearing, four witnesses on behalf of the landlord. The witnesses' names and telephone numbers were taken and then the witnesses were excluded from the hearing. The tenants stated they had not received prior notification that witnesses would be part of this proceeding.

Given the landlord had not provided any written submissions or evidence, and had not notified the tenants that witnesses would be present; I asked the tenants as to what information they understood the witnesses would provide if they were called to testify. The tenant stated the he understood the witnesses would testify as to him doing mechanic work at the residential property; that they saw the tenant carrying a paintball gun at the residential property; and, that the tenant associates with "unsavory characters" at the residential property. The tenant indicated he was prepared to acknowledge such behaviour has occurred. As for any other information the witnesses may provide, I was of the view that the tenants have the right to understand the allegations that the landlord intends to make against the tenants prior to the hearing so that the tenants are prepared to respond, in keeping with the principles of natural justice. Since the tenants acknowledged certain behaviour that they understood the witnesses were going to provide, I found it unnecessary to call the witnesses.

The landlord also raised other issues which I heard and have considered in making this decision.

It should be noted that this was difficult hearing. The tenant frequently interrupted, despite my warnings for him to not interrupt and the landlord's submissions were unorganized and devoid of specific dates on most cases.

The landlord's name was amended to reflect the correct order of the landlord's name as confirmed by the landlord during the hearing and as seen on the Notices to End Tenancy.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities be upheld or cancelled?
2. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

According to the landlord, the tenancy commenced in or about July 2015. According to the tenants the tenancy started approximately two years ago. Neither party provided a copy of the tenancy agreement for my review.

I heard undisputed testimony that the rental unit is an apartment in a multiple unit building. Other units are occupied by other tenants of the landlord.

I heard that rent does not include utilities and the tenants have their own utility accounts; however, the landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* on July 29, 2016 indicating the tenant failed to pay utilities of \$251.72. The landlord acknowledged that the tenant does not owe any utilities to the landlord but that this amount represents costs to repair a broken window. A *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* is a form used to end a tenancy for unpaid rent and/or unpaid utilities only under section 46 of the Act. Having heard the tenants do not owe rent or utilities to the landlord, I cancelled the Notice as there was no basis for its issuance.

On July 31, 2016 the landlord posted a 1 Month Notice to End Tenancy for Cause on the door of the rental unit. The 1 Month Notice indicates the following reasons for ending the tenancy:

- 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.
 - Jeopardize a lawful right or interest of another occupant or the landlord.

Despite cancelling the 10 Day Notice and noting that the 1 Month Notice does not indicate the tenants damaged the rental unit, both parties wished to introduce evidence concerning repayment of costs to repair a broken window. I found and informed the parties' that their submissions concerning the tenants' liability to pay for the cost of the broken window to be irrelevant to these proceeding and the landlord was informed of his right to accept partial payments from the tenant, accept the tenant's offer to take it from the security deposit, or file an Application for Dispute Resolution seeking a Monetary Order against the tenant. Nevertheless, both parties repeatedly tried to introduce evidence with respect to the broken window. Unfortunately, their focus on this issue was a poor use of their hearing time.

As for reasons the landlord issued the 1 Month Notice on July 31, 2016 I heard the following submissions:

Landlord's submissions

1. The tenant and/or persons the tenants permit on the property have been performing mechanical work, including spray painting, on vehicles, bicycles and other machinery and equipment in the common parking area which is a violation of "the building rules". The landlord did not provide a copy of the building rules, tenancy agreement, or addendum, for my consideration.
2. The tenant has brought a motor bike through the common hallways and into the rental unit.

3. The tenant carries knives and guns through the common areas to his rental unit.
4. The tenant or persons permitted on the residential property prop by the tenant prop the fire/exit doors open.
5. The tenant yells, plays loud music, and vacuums at all hours of the day and night, disturbing other tenants.

As for warnings issued to the tenant, the manager stated she had verbal discussions with the tenant about refraining from performing mechanical work on the property and in response to those discussions the tenant will comply for a while but then resumes the behaviour. The manager did not provide specific dates or events as to when these discussions took place and the subsequent offending behaviour. However, I heard that more recently, a vehicle undergoing repairs by the tenant caused so much smoke the smoke alarms went off in the building and the fire department attended the property.

The landlord stated that a written warning was given with respect to storing items in the hallway and after giving the tenant that written warning he removed the items in the hallway.

After issuing the 1 Month Notice, the landlord asserted that a paintball gun was fired in the underground parking garage and a pellet gun was fired from the residential property and the landlord suspects it was the tenant that did this.

The landlord was apparently frustrated with the male tenant in particular. The landlord submitted that it seems that if it is not one thing it is something else with this tenant and the landlord feels like an unusual amount of time and effort is spent dealing with this tenant.

Tenant's responses

The tenant stated that he had asked the manager when he moved in whether he could do light mechanical work on the property and the manager said he could. The manager later asked the tenant to stop doing so and he did, with the exception of a repair he made in June 2016 when he obtained consent from the manager for that specific job. The tenant also pointed out that the manager asked him to make a repair the manager's husband's bike or vehicle. The tenant said he is prepared to not do any mechanical work on the property if that's what the landlord wants.

The tenant acknowledged that he brought a scooter to the rental unit so that he could store it on his balcony but that was with the manager's knowledge.

The tenant does have a paintball gun as he belongs to a paintball gun club and does carry to and from his apartment. The tenant is of the view that this is not illegal.

The tenant does vacuum frequently because they have a long haired cat; however, more recently the tenant acquired a quieter vacuum after receiving a complaint from the manager about the loudness of his previous vacuum.

The tenant was of the position that the vehicle that created a lot of smoke was being worked on at an adjacent property and not the residential property.

The tenant denied that he fired a paintball gun in the parking garage or a pellet gun from the property and noted that the police were not called to deal with the situation.

As for the fire doors, the tenant indicated he was unaware that the exterior doors are fire doors and that it is not him that has propped open the doors.

During the hearing, I informed the tenant that under section 47 of the Act, a tenant may be evicted where the offending behaviour is that of a person permitted on the property by the tenant. The tenant appeared surprised to learn of this and in response he indicated he is prepared to stop allowing certain people to be on the property as he does not want to jeopardize the tenancy.

I also informed the tenant that other tenants in the building are entitled to quiet enjoyment of the property and that where one tenant is unreasonably disturbing other tenants, the landlord is expected to take action and that failure to cease the disturbing behaviour is grounds for eviction. The tenants stated that they really like living in their unit at the property and did not wish to jeopardize their tenancy.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The 1 Month Notice before me indicates the tenants have engaged in illegal activities; however, I find the landlord did not present evidence to suggest the tenant, or a person permitted on the property has engaged in illegal activity prior to the issuance of the 1

Month Notice. Therefore, I did not consider illegal activities as a basis for eviction further.

As for the other reasons indicated on the 1 Month Notice, I provide the following findings and reasons.

It was undisputed that the tenant, or persons permitted on the property by the tenant, have engaged in activities that include mechanical work on vehicles, bicycles, or other types of equipment and that this activity took place in the common areas on the residential property. I accept that other tenants may find this activity disturbing due to noise or smell and I accept that such activity has potential to cause damage to the property. However, it would appear that this activity was either done with the manager's knowledge or permission or tolerated for a period of time. Both parties acknowledged that the tenant was asked to stop such activities, and that he did for some time, before the activity resumed again although the tenant claims the activity resumed with permission manager. Considering the lack of evidence from the landlord, such as written notices and specific dates and events, and the tenant's willingness to cease performing or allowing mechanical work to be performed on the property, I find it appropriate to resolve this issue by way of an order to the tenant.

As for other activities including vacuuming, yelling and loud music I accept that very loud sounds, or repetitive or ongoing noises, are disturbing to other tenants; however, given the landlord's lack of evidence such as warning letters and specific dates; and, considering the tenant claimed to have acquired a quieter vacuum, I find it appropriate to resolve this issue by issuing an order to the tenant.

Given the tenant's reaction to the landlord's submissions concerning the propping open doors at the residential property, I find it likely that the exterior doors of the property, which serve as fire doors, have been propped open by the tenant or persons he permits on the property. Therefore, I issue another order to the tenant to ensure such activities ceases.

In light of the above, I find the landlord did not satisfy me that the tenancy should end for cause and I cancel the 1 Month Notice; however, I am satisfied that this has been a problematic tenancy and with a view to resolve the on-going or future disputes I issue the following orders, pursuant to the authority afforded me under section 62 of the Act.

The tenants are ORDERED to:

- 1. Cease performing or allowing any mechanical work, including painting, to be performed on vehicles, bicycles, machinery or equipment on the residential property.**
- 2. Do not yell, play loud music, movies or television or permit unreasonably loud noises to occur at any time while in the rental unit or anywhere on the residential property.**
- 3. Do not vacuum after 9:00 p.m. or before 8:00 a.m.**
- 4. Do not prop open any exterior door or any other fire door or exit and ensure any person permitted on the property by the tenants do not do so.**

The above orders are effective immediately upon receipt of this decision.

Failure to comply with the above orders may be grounds for the landlord to issue a 1 Month Notice to End Tenancy for Cause for breach of an order of the director under section 47(1)(l).

As the tenants were informed during the hearing, a tenancy may be ended where the activities of a person permitted on the property by the tenant are offending, disruptive or damaging as provided under section 47 of the Act. By way of this decision, the tenants are now considered fully aware that they are responsible for the actions of persons they permit on the property. To be clear, firing a paintball gun or pellet gun on the property is not acceptable behaviour as it has the potential to damage or harm property or people and the tenants must not do so or allow person they permit on the residential property to engage in such behaviour.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated July 29, 2016 is set aside as the tenants do not owe any utilities to the landlord.

The 1 Month Notice to End Tenancy for Cause dated July 31, 2016 is cancelled due to insufficient evidence from the landlord and the tenancy continues at this time. However, I have issued a number of cautions to the tenants concerning conduct of persons they permit on the property and I have issued ORDERS to the tenants by way of this decision. The landlord remains at liberty to issue another 1 Month Notice to End Tenancy for Cause to the tenants should the tenants give the landlord further cause, including failure to comply with the ORDERS I have issued to the tenants by way of this decision.

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: October 5, 2016

Residential Tenancy Branch

