



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel 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.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

At the end of July 2016 the landlords and the tenant executed a tenancy agreement that started August 1, 2016; however, the tenant and her former boyfriend had been co-tenants at the rental unit for the months of March 2016 through July 2016 and the tenant had been an occupant of the rental unit prior to March 2016. The tenant is currently required to pay rent of \$850.00 on the first day of every month. The rental unit is one of four rental units on the property.

On August 22, 2016 the landlords issued the subject 1 Month Notice to End Tenancy for Cause (the Notice) to the tenant and put it in the door jamb of the rental unit on the same day. The tenant found the Notice in her door jamb that same day and filed to dispute the Notice within the time limit for doing so.

The stated reasons for ending the tenancy, as indicated on the Notice are:

- 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; and,
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park (with a handwritten notation of "pet deposit")

During the hearing, the landlords stated that the second reason was indicated in error and the landlords are not alleging the tenant has engaged in illegal activity. Accordingly, I did not consider this reason further.

As for the third reason, the landlords submitted that a pet damage deposit was paid during the co-tenancy and that the tenant was given credit for the pet damage deposit in transferring it to the current tenancy agreement since the tenant had informed them that she had paid the pet damage deposit during the co-tenancy. However, the tenant's former boyfriend/co-tenant has requested return of the pet damage deposit paid during the co-tenancy and he presented the landlords with proof the funds had come from his bank account. Although the landlords were of the position that the tenant had given them false information about paying the pet damage deposit, the reason indicated on the Notice applies to circumstances where a tenant gives false information to a prospective tenant or purchaser of the property which is not the case here, and I did not consider the third reason further. Nevertheless, the tenant had evidence to show that she had transferred money to her former boyfriend/co-tenant just prior to her former boyfriend paying the pet damage deposit to the landlords and with a view to assisting the parties resolve this issue, I informed the parties that landlords are not required to determine which co-tenant provides the funds for a deposit. Co-tenants are jointly and severally liable and entitled to the respective rights and obligations of a tenant under the Act. Thus, a landlord may return a pet damage deposit to one co-tenant so as to dispose of the deposit and it is upon the co-tenants to apportion the returned deposit among themselves. In this case, the landlords gave the tenant credit for the pet damage deposit paid during the co-tenancy and transferred it to her current tenancy agreement. Thus, the pet damage deposit paid during the co-tenancy has been disposed of by giving it to the tenant and it is up to the former co-tenants to resolve this issue as to which one paid the deposit.

Since the second and third reason were withdrawn or dismissed, the only reason for ending the tenancy that was explored in depth is the first reason indicated on the Notice: unreasonable disturbance or significant interference of other occupants. Below, I summarize the parties' respective submissions regarding this reason.

Landlords' submissions

The landlords testified that in August 2016 the tenants of the other three rental units at the property orally complained to the landlords about the tenant's conduct at the property since the tenant moved into the rental unit. Based upon the oral complaints of the other tenants the landlords issued the 1 Month Notice.

After the tenant filed to dispute the Notice the landlords sought written statements from the other tenants. The tenants of two of the three other rental units provide written statements. The written statements were included in evidence and were provided to the tenant.

One of the other tenants described the following in her written statements:

- On two occasions the police attended the property in response to domestic violence, in March 2016 and July 2016, and an ambulance was called to provide aid to the tenant in July 2016 as she was threatening to self-harm.
- Being awoken numerous times, at all hours of the night and early morning hours, due to the tenant screaming and/or repeatedly pounding on the door.
- The tenant's mother had made another tenant aware that the tenant is mentally unstable and has a history of self-harm.
- The tenant driving to and from the property while obviously intoxicated.
- The tenant leaves garbage and junk strewn around the yard.
- On August 1, 2016, the tenant reported to the police that another tenant was abusing her child. Although the child was crying for quite some time it was because he had hurt his finger and when the police attended the police determined there was no abuse taking place.
- In September 2016, at approximately 10:00 p.m., the sounds of very loud sexual activities while the tenant's window was wide open causing the complainant's child to awaken.

Another tenant described the following in her written statements:

- Hearing loud arguments between the tenant and the tenant's former boyfriend/co-tenant and the former boyfriend/co-tenant banging on the door of the rental unit.
- Sounds of anger and violence towards other people besides the tenant's former boyfriend/co-tenant.
- On August 22, 2016 the tenant was yelling loudly at her mother at the property for 10 – 15 minutes.
- On August 31, 2016 the sounds of yelling between a male and female at the rental unit and then door slamming.

Both of the tenants who provided the written statements indicate that they feel uncomfortable with the tenant remaining at the property and will look to end their tenancies should she remain.

The landlords also described a situation in September 2016 where the tenant's former boyfriend/co-tenant was at the property again and another disturbance before he sped out of the driveway in his car.

The landlords submitted that the other tenants residing at the property are good long term tenants and they do not want to lose the good tenants due to the tenant's conduct which appears to be escalating.

The landlords acknowledge that they did not issue a warning, oral or written, to the tenant prior to entering the tenancy agreement with her at the end of July 2016 or prior to issuing the Notice to her. The landlords explained that it was not until August 2016 that the other tenants came forward with all of their complaints, including matters that pre-dated the formation of the current tenancy agreement, but that the other tenants had not been made aware that the landlords were contemplating entering into a new tenancy agreement with the tenant.

Tenants' submissions

The tenant acknowledged that there were domestic incidents involving her and her former boyfriend/co-tenant after moving to the property in February 2016; however, the landlords entered into a tenancy agreement with the tenant in late July 2016 after the co-tenant/former boyfriend moved out and issues were not brought to the tenant's attention prior to entering into a tenancy agreement with her. Nor, did the landlords bring any complaints to the tenant's attention prior to serving her with the Notice.

The ambulance did attend the property on July 25, 2016, not because the tenant was going to self-harm, but to render assistance to the tenant because she had a miscarriage. The tenant provided evidence from a doctor to confirm her position.

The tenant acknowledged that there was some junk and garbage left on the property but claims that it was from her former boyfriend/co-tenant and that she has cleaned up the property although some of his possessions remain.

The tenant admitted that she did call the police on August 1, 2016 regarding a child crying in a neighbouring rental unit because she had heard the child crying for quite some time and she was concerned for the child's welfare. The tenant did not report abuse to the Ministry of Children and Families. The tenant provided a written statement from a friend who was visiting the tenant on that day and claims to have heard the sounds of a child crying and the neighbour yelling for about an hour before the police were called.

The tenant's former co-tenant/boyfriend did come to the property at the end of August 2016 and against in September 2016 and the tenant acknowledged that he was honking his horn and did speed out of the driveway; however, the tenant submitted that he was an unwanted or uninvited person and she had notified the landlords right away of this event.

The tenant denied having loud sex with her guest in September 2016 and claims to have been watching a movie with her guest. The tenant pointed out that her son was also home that night.

The tenant stated that she has no idea as to why the other tenants would launch complaints against her in an attempt to get her evicted.

The tenant's mother was called to testify. The tenant's mother acknowledged that she did ask another tenant to keep an eye out for the tenant because she had been going through a hard time with the break-up and health issues. The tenant's mother also testified that the tenant did yell and scream at her for 10 – 15 minutes on August 22, 2016 after the tenant had received the eviction Notice and in response to the mother refusing to give the tenant certain documents she was seeking. The tenant's mother testified that she and her daughter have not had another argument at the property since then.

The tenant's advocate argued that the landlords have reinstated the tenancy since rent was paid for October 2016 without a receipt indicating it was accepted for "use and occupation only".

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. Where a Notice indicates multiple reasons, it is sufficient to end the tenancy where one of the reasons is proven.

Under section 28 of the Act, every tenant is entitled to quiet enjoyment. Quiet enjoyment includes freedom from unreasonable disturbance and freedom to use common areas without significant interference. Where a tenant is unreasonably disturbed or significantly interfered with by another tenant of the residential property, the landlord is expected to take reasonable action so as to protect the tenant's right to quiet enjoyment and this may include ending the tenancy of the offending tenant as provided under section 47(1)(d) of the Act. The landlords have issued a Notice to End Tenancy to the tenant under section 47(1)(d) and alleged that she has unreasonably disturbed or significantly interfered with other tenants of the property.

Upon consideration of everything before me, I provide the following findings and reasons as to whether there are sufficient grounds to end this tenancy.

It is apparent that the relationship between the tenant and her former boyfriend/co-tenant was tumultuous and resulted in a number of loud arguments and police attendance during the co-tenancy and prior to the start of the current tenancy agreement with the tenant only. I accept that such conduct was disturbing to the other tenants of the property as these arguments were described by the tenants who provided written statements. Considering the former co-tenant/boyfriend moved out of the property and the landlords entered into a new tenancy agreement with the tenant only, I would expect that the disturbances would have ceased if they were the result of the tumultuous relationship; however, that does not appear to be the case here.

After the relationship ended with the former boyfriend/co-tenant the former boyfriend has returned to the property on a few occasions and further disruptions occurred. While I accept

and appreciate that the former boyfriend was not invited to the property and he appears to be confronting the tenant, as evidenced by text messages she provided.

If I were to disregard the actions of the former boyfriend/co-tenant because he has been an unwanted person at the property, I heard of other disturbances that did not involve the former boyfriend. It was undisputed that the tenant was loudly screaming at her mother on August 22, 2016 which other tenants heard and in September 2016 the tenant disturbed other occupants with loud noises, whether that was from her television or having sex.

I have given consideration to continuing this tenancy since the tenant was not put on notice that she was disturbing other tenants by way of a warning from the landlords; however, the tenant's actions have continued to be disturbing to other occupants even after she was given the Notice. Since the tenant is seeking to continue the tenancy I find it reasonable to expect that she would conduct herself in such a way so as not to cause further disturbance. Yet, she has been directly responsible for disturbing the other occupants of the property on at least two occasions after receiving the Notice: when she was heard screaming at her mother and when sounds of loud sex or a movie were heard and awoken other occupants. Accordingly, I am of the view that a warning or order from me would likely have little effect on curbing the disturbances the other tenants are enduring and to continue the tenancy would result in on-going disturbances of the other tenants. Therefore, I find that the landlords have satisfied me that this tenancy should end due to unreasonable disturbance or significant interference with other occupants of the property.

As for the Advocate's argument that the tenancy was reinstated due to payment of rent for October 2016, I reject that position. A tenancy may be considered to be reinstated where both parties have mutually agreed to withdraw a Notice to End Tenancy. Paying rent after the effective date of a Notice may be one indication that the parties have agreed to withdraw a Notice to End Tenancy; however, that act is in itself not definitive. Considering this hearing was set to be heard mid-October 2016, the tenant continued to benefit from the continued use and occupation of the rental unit, and the landlords had been serving the tenant with evidence in support of ending the tenancy, I find the landlords did not act in such a way that a reasonable person would conclude they want to continue this tenancy.

In light of the above, I dismiss the tenant's application to cancel the Notice. As provided under section 55 of the Act, if a Notice to End Tenancy meets the form and content requirements of the Act, which it does, and the tenant's application to cancel a Notice to End Tenancy is dismissed, the landlords shall be provided an Order of Possession. Accordingly, I provide the landlords with an Order of Possession with this decision. In consideration that the tenant has paid for the month of October 2016, I provide the landlord's with an Order of Possession with an effective date of October 31, 2016.

Conclusion

The tenant's application to cancel a 1 Month notice to End Tenancy for Cause has been dismissed. The landlords are provided an Order of Possession with an effective date of October 31, 2016.

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 19, 2016

Residential Tenancy Branch