



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On October 7, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause (“the 1 Month Notice”) be cancelled.

The matter was set for a conference call hearing. 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.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began June 1 2012, and is a month to month tenancy. Rent in the amount of \$694.57 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$337.50.

The Landlords testified that they purchased the rental building in 2016.

The Landlord testified that they are having a number of issues with the Tenant. The Landlord testified that the Tenant has threatened other occupants of the rental property and the Landlord believes the Tenant is dealing drugs in the building.

The Landlord testified that a 1 Month Notice dated September 29, 2016, was issued to the Tenant on September 29, 2016.

The 1 Month Notice indicates that the reason for ending the tenancy is:

- Tenant or a person permitted on the property by the Tenant has:
 - Seriously jeopardized the health or safety or lawful right of 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

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 1 Month Notice on October 7, 2016, within the required 10 day time frame.

The Landlord B.M. testified that he entered the Tenant's rental unit to conduct an inspection and found two people engaged in sex. He testified that the two people do not live in the rental unit and they immediately left. He testified that he found drug paraphernalia in the rental unit.

The Landlord testified that a painter working in the hallway witnessed someone go into a convulsion inside the Tenants unit. The Landlord provided a copy of a statement from the painter that states *"inside was a girl flailing around which appeared to me to be high on drugs"*.

The Landlord testified that the Tenant has constant activity of people coming into the rental building. He testified that the Tenants traffic is substantially higher than other Tenants.

The Landlord provided documentary evidence of a front door entry log report showing requests for access, and access granted by the Tenant. The Landlord testified that the door entry log shows the Tenant has granted access into the building 492 times from September 29, 2016, to November 15, 2016. The Landlord testified that all the other residents combined allowed access 92 times.

The Landlord also testified that the Tenants behaviour presents a safety concern because the fire doors at the rear of the building are being left open, and the Tenant is the main user of the fire doors. The Landlord also testified that the Tenant or his guests are occasionally propping the front door open.

The Landlord submitted that the Tenant threatened another occupant of the building who called the Police on the Tenant. The Landlord provided a copy of an incident report dated July 22, 2016, from an occupant of the building that indicates the Tenant swore at him. The occupant asked the Tenant to repeat what he said but the Tenant did not and replied by threatening the occupant by saying his friends would take care of him.

In response, the Tenant testified that he has lived in the building for 5.5 years without complaint until the new owners took over.

The Tenant testified that he was in the hospital when the Landlord posted a notice of entry for an inspection. The Tenant asked friends to stay in the apartment and be present for the inspection. The Tenant testified that the Landlord walked into the unit and questioned them, so they left.

The Tenant testified that there was not a girl flailing around in his rental unit. He testified it was a friend of his who was dancing.

The Tenant testified that just because he has a lot of friends who visit him it does not mean that they are drug users.

The Tenant testified that the Landlord bullies him and his guests and he has not had any complaints from neighbours.

The Tenant testified that the building is under renovation and there are lots of empty units on his floor.

The Tenant provided an explanation for the front door access log. He testified that he lost his key fob that unlocks the front door. He testified that he often leaves a friend in the rental unit when he goes out and has to call to request to be let back in to the unit. The Tenant testified that he could not afford the replacement cost of \$150.00 for another key fob.

The Landlord testified that the Tenant signed an agreement to pay \$75.00 for a replacement key fob and \$150.00 for a second replacement fob. The Landlord testified

that the Tenant does not want to pay for a replacement key fob and he bothers other residents to let him into the building.

The Landlord testified that the door log does not include entries of when the Tenant uses a key fob, and that the Tenant did have a key fob during the period recorded by the log.

Analysis

The Landlord's 1 Month Notice states that the 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.

Residential Tenancy Policy Guideline # 32 is intended to clarify relevant issues such as the meaning of "illegal", what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered.

"The term 'illegal activity' would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants."

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that dealing drugs on the residential property is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. However, I find that there is insufficient evidence from the Landlord to establish that the Tenant has engaged in illegal activity. While the front door activity by the Tenant is suggestive of illegal activity, the Tenant provided an explanation that was

partially corroborated by the Landlord. There is insufficient evidence to establish that the Tenant is dealing drugs on the rental property. In addition, I find that the allegations of a girl flailing in the unit, drug paraphernalia, and a couple engaged in consensual sex in the unit are not reasons that are serious enough to justify ending the tenancy.

The 1 Month Notice states the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

While I acknowledge there was an altercation between the Tenant and another occupant in the building, I do not find the circumstances to be serious enough to warrant ending the tenancy. The Landlord suggests the Tenant is responsible for leaving the fire doors ajar because he is the main user. The Landlord did not provide any evidence to support this suggestion. I find that the Landlord has provided insufficient evidence that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Tenant's Application to cancel the 1 Month Notice To End Tenancy For Cause dated September 29, 2016, is granted. The 1 Month Notice is set aside.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The 1 Month Notice To End Tenancy For Cause dated September 29, 2016, is set aside. 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: December 07, 2016

Residential Tenancy Branch