



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASTORIA HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on November 1, 2016. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord (the Landlords) and the Tenant. The Tenant and Landlord G.M. made affirmed oral submissions. The Landlord R.S. did not make submissions.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the Tenant's application for Dispute Resolution and Notice of Hearing documents. The Landlord testified they had not submitted documentary or digital evidence in response to the Tenant's application.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the burden of proof to uphold the 1 Month Notice issued October 26, 2016?

Background and Evidence

The Landlord testified the Tenant entered into a verbal tenancy agreement which commenced on August 17, 2016. He stated the rent was \$425.00 payable on the first of each month and that the Tenant paid \$212.50 on August 17, 2016 for the security deposit.

The Tenant disputed the Landlord's submission and stated he had occupied the rental unit for a period of 7 to 10 years. He asserted his rent was \$475.00 and that he paid his security deposit which was half of his rent when he first moved into the unit.

The Landlord submitted that on October 23, 2016 and the following month, he saw a significant amount of foot traffic going in and out of the Tenant's rental unit. He stated that while that was not unusual he argued the fact that the people were staying for less than 30 seconds and were leaving with clenched fists were behaviours consistent with dealing with illicit drugs.

The Landlord stated that while they normally involved the police in such instances they considered recent events in the community and decided to issue the Tenant a 1 Month Notice instead of involving the police. He said they are now seeking the assistance of the Residential Tenancy Branch (RTB) to help them interrupt and stop these illegal activities by upholding the notice to end tenancy.

The 1 Month Notice was issued pursuant to Section 47(1) of the Act listing an effective date of November 30, 2016 for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- 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

The Landlord stated that he witnessed the traffic of people increasing from being other tenants to including people coming in from the outside.

The Tenant disputed the Landlord's submissions submitting that, while he does have a lot of people coming to his rental unit, they were coming to buy DVD's, cigarettes, or to borrow money. He argued that the Landlord's staff also lends money to tenants so he is not the only one in the building doing that.

The Tenant argued the people coming to his rental unit were tenants and not people from outside the building. The Tenant submitted that since receiving the Notice he has told the people not to come to his rental unit.

The Landlord was given the opportunity to question the Tenant during which the Tenant confirmed that he sold cigarettes and charged interest on the money he lent to others. The Tenant argued that the Landlord's staff members also lent money and charged interest.

In closing, the Landlord argued there was a preponderance of evidence to prove the Tenant's actions were illegal.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden. As is the case here, I find the Landlord submitted insufficient evidence to prove the Tenant has allowed an unreasonable number of occupants in the unit or site as guests who come for a visit of less than a minute are not considered occupants.

Furthermore, notwithstanding the Landlord's concern with the current events in their community, I find the Landlord submitted insufficient evidence the Tenant was engaged in the illegal activity of selling illicit drugs. Rather, in absence to evidence to prove the contrary or that the Tenant's actions were illegal, I find the Tenant provided a plausible explanation for why people were coming to his rental unit.

In the presence of the disputed verbal testimony, I find there was insufficient evidence to prove the Tenant's actions adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord or jeopardized a lawful right or interest of another occupant or the landlord.

Based on the totality of the oral submissions before me I find the Landlord submitted insufficient evidence to uphold the merits of the 1 Month Notice. As such, I grant the Tenant's application and cancel the 1 Month Notice issued October 26, 2016. This tenancy continues to be in full force and effect until such time as it is ended in accordance with the *Act*.

Conclusion

The Tenant was successful with his application and the 1 Month Notice issued October 26, 2016 was cancelled.

This decision is final, legally binding, and 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 22, 2016

Residential Tenancy Branch