



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant's advocate, TB, ('tenant'), testified on behalf of the tenant in this hearing and was given full authority to do so. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence. The landlord submitted evidence, which was received after the hearing, which is described in my decision below.

The landlord testified that the 1 Month Notice to End Tenancy for Cause, with an effective date of January 5, 2017 ('the 1 Month Notice') was served to the tenant on December 1, 2016 by posting it on the tenant's door. The tenant confirmed that she received the 1 Month Notice. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began eighteen years ago, with monthly rent currently set at \$815.00 per month, payable on the first of each month.

The landlord's 1 Month Notice identified the following grounds for ending this tenancy for cause:

1. The tenant has allowed an unreasonable number of occupants in the unit/site.
2. The tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord,

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and
 - (iii) put the landlord's property at significant risk;
- 3. The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, and
 - (iii) has jeopardized a lawful right or interest of another occupant or the landlord.
- 4. The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

The tenant, at the beginning of the hearing, indicated that her name on the 1 Month Notice was spelled incorrectly, and that the landlord's address was incomplete. I advised the parties that I would be correcting these deficiencies as requested by the parties. She did not dispute service of the 1 Month Notice, but disputes the reasons provided by the landlord.

The landlord testified to the following. The landlord issued the 1 Month Notice in response to complaints received from other tenants in the building. The neighbour who resides below the tenant had complained about the noise from above, and as a result could not sleep. The landlord testified that the tenant allowed frequent visitors to the suite, who made a lot of noise. The landlord had provided a handwritten letter with the 1 Month Notice, from another tenant, dated November 29, 2016 complaining about "furniture moving like chair and table", and smell of "a strange and strong odor of drugs". A copy of this letter was submitted as part of the tenant's application package.

The landlord also testified that the tenant had allowed her brother to park his car in an unauthorized parking spot, and this has occurred on more than one occasion. The landlord testified during the hearing that the tenant's brother was a frequent visitor, and made a lot of noise. The landlord indicated in the hearing that he had attempted to fax evidence to the Residential Tenancy Branch in support of this, but the evidence was not received on time for the hearing. I note that a fax was received shortly thereafter containing a photocopied photo of a car, and a note from the landlord, dated January 9 2017, stating that the tenant's car was parked illegally on the property, and they were "making noises and doing some kind of business there". No warning letters were provided in the landlord's evidence. As the note was dated well after the completion of this hearing, I have not taken this document into consideration in reaching my decision.

The tenant disputes the landlord's claims, including the allegations of illegal activity. The

tenant's advocate, during the hearing, testified that the tenant did have visitors, including her brother. The brother made frequent visits in order to assist the tenant with her daily living due to her health issues. The tenant was a long-term resident at this rental suite for eighteen years, and she believed that the landlord was blaming the wrong tenant. The advocate submitted that the landlord did not have the right to restrict guests from visiting the tenant.

During the hearing the landlord responded to the tenant stating that she should be in a care home if she required assistance. The tenant's advocate responded that she was not eligible for one. The landlord is seeking an Order of Possession based on the above stated grounds.

Analysis

When a landlord issues a 1 Month Notice, and the tenant applies to cancel this notice, the burden of proof to justify ending this tenancy is on the landlord.

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...*

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property...

Although the landlord provided oral testimony that the tenant participated in illegal activity, insufficient evidence was provided to support this allegation except a letter from another tenant who smelled a strong odour of drugs. The tenant disputed the landlord's testimony that she participated in any illegal activity, and the landlord did not call this person as a witness during this hearing. As the landlord has not provided sufficient evidence to demonstrate that illegal activity has been happening in this rental suite, I cannot grant an Order of Possession on these grounds.

Although the landlord had indicated that the tenant or her guest had caused extraordinary damage to the suite, no written evidence was provided by the landlord to support this, nor was this claim supported by any testimony during the hearing. Accordingly, I cannot issue an Order of Possession on these grounds.

The landlord also testified that the tenant had allowed an unreasonable number of occupants in the suite. Although the tenant did not dispute the fact she had visitors, the landlord did not provide any testimony during the hearing that supported this claim. The tenant testified she had visitors like her brother to assist her in her daily living, but these visitors cannot be considered occupants as they did not reside at the rental suite. As there is no evidence to support multiple occupants in the suite, yet alone an unreasonable number of them, I cannot make a finding that an Order of Possession should be granted on this basis.

The landlord also indicated on his 1 Month Notice that the tenant has significantly interfered with or unreasonably disturbed another occupant or landlord, as well as seriously jeopardizing the health, safety, or lawful right of another occupant or landlord. The landlord also indicated that the tenant put the landlord's property at significant risk. The landlord expressed concern about excessive noise created by the tenant and her guests, including her brother, and this issue was mentioned in the letter provided by another occupant in the building. The tenant disputed this allegation saying that the landlord was blaming the wrong occupant. The landlord did not call any witnesses in this hearing to confirm these allegations, nor did the landlord provide any further evidence to support any of these claims. As the landlord has not established that the tenant, or her guests, were the cause of any excessive noise, and as the landlord has not established how the tenant put his property at significant risk, I cannot issue an Order of Possession on these grounds.

I find the landlord has not met the burden of proof to justify that there is sufficient cause to end this tenancy on any of the above grounds. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

Conclusion

I allow the tenant's application, and the 1 Month Notice is cancelled. This tenancy is to continue as per 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: February 2, 2017

Residential Tenancy Branch