



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause and for an Order for the landlord to make repairs to the unit site or property.

The tenant along with an agent acting for the tenant and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's application to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining section of the tenant's claim at this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?

Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2014. Rent for this unit is \$760.00 per month due on the first of each month. The tenant paid a security deposit of \$380.00 on August 17, 2014.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) in person on January 10, 2017. A copy of the Notice has been provided in documentary evidence. The Notice has an effective date of February 15, 2017 and provides the following reasons to end the tenancy:

- 1) *The tenant has allowed an unreasonable number of occupants in the unit*
- 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 of the residential property,*
 - (iii) *Put the landlord's property at significant risk;*

The landlord testified that the tenant allowed other occupants to reside in her rental unit. The landlord testified that he was doing some renovations in another of the units during January, 2017 and saw two males living in the unit who were there during the day time periods at least. After the landlord had finished these renovations he asked another tenant to take notes on her observations showing these males in the unit. The other tenant provided a letter to the landlord and has documented various times and dates from January 31, 2017 to February 09, 2017 where she saw an Explorer coming and

going from the car park during the day and night time and on one occasion saw the tenant and a male outside at 2.30 a.m. verbally fighting.

The landlord testified that as this unit is only 600 square feet and utilities are included in the rent it is for the tenant and her child's occupancy only.

The landlord testified that the tenant has significantly interfered with the landlord's ability to rent another unit out with common laundry facilities as the tenant has kept the common area of the laundry room in a terrible condition. The tenant has left clothes and garbage all over this area which would significantly interfere with any other tenant's use of the laundry room. Furthermore, the tenant has kept a dog in the laundry room at least during the month of January. The landlord went to the storage room located off the laundry room and the tenant's dog was tied up to the door. The landlord has seen this dog on another occasion untied. Only this tenant uses this laundry room and when the landlord re-rented another unit he had to rent that unit without the use of this common area. The landlord referred to his photographic evidence showing the condition of the common area.

The landlord testified that the tenant has caused significant damage to her rental unit. This unit was renovated prior to the tenant moving in with new drywall, paint and new carpet in the bedroom and new laminate in the living room and kitchen. The landlord referred to his photographic evidence showing two pictures of the unit before the tenant moved in. The landlord also referred to his photographic evidence showing damage to the tenant's unit. There are holes in the bedroom walls, stains and carpet pulls on the carpet, missing cabinet doors and drawer fronts, the entrance door was kicked in and the door the tenant put up to replace that door does not fit correctly. The damaged door is in two pieces and has been left in the laundry room.

The landlord testified that the garbage and clothing strewn about the laundry and storage room could put the landlord's property at significant risk as there are many items of garbage thrown around the furnace and hot water tank which poses a fire risk.

The landlord testified that due to these issues he seeks to have the Notice upheld and requested an Order of Possession effective two days after service upon the tenant.

The tenant disputed the landlord's claims. The tenant's agent testified that the tenant does not have anyone else living in the unit other than her child. The tenant's child's father does come to the unit regularly to see his child and help with the childcare. He also parks his vehicle at the unit while he goes to work. The tenant's agent referred to a letter from the tenant's child's father in which he states he lives somewhere else and had provided an address where he lives. The tenant's agent also referred to a letter from the person the tenant's child's father lives with, stating that he lives at her unit and not the tenant's unit. The other male the landlord referred to in January as being at the tenant's unit only came as a guest and stayed over for a night.

The tenant's agent testified that the landlord's photographs of the laundry room and storage room were taken just after the upper tenants had vacated. The mess left in this unit was their belongings and garbage and some items also belong to the landlord. The tenant was worried she would get blamed for this mess and so the tenant cleared all the clothing and garbage from this area and only left items which belong to the landlord such as boxes of flooring and wire shelving racks. The tenant's agent referred to the tenant's photographic evidence showing these rooms are clean and tidy.

The tenant disputed that she kept a dog in the unit. The tenant's agent testified that the tenant's child's father would come to visit his child and bring his dog. The tenant told him the dog was not allowed in her unit so the dog was put in the laundry room tied up whenever he came to visit his child. The tenant did not think this would be a problem as other tenants have two dogs and another tenants has cats. The tenant agreed she does have a cat but her agent testified that there is nothing in the tenancy agreement that prohibits the tenant from having a pet.

The tenant's agent testified that with regard to the landlord's photographic evidence showing damage; his pictures are very hard to see as they are black and white. The tenant agrees that her child did pull off a kitchen cupboard door and that the false drawer fronts then fell off because the kitchen cabinets are very cheaply made. The tenant informed her agent that no move in inspection report was done with the tenant at the start of the tenancy and the holes in the wall were already there along with the damage to the inside of the fridge which had been taped up by the landlord. The oven door never closed properly, the hot water stopped working in the bathtub last year and there are no stains or pulls in the carpets. The tenant agreed however, that her child's father did kick the entrance door in and her father replaced this. It mostly fits and does lock but is not quite the same as the door that was broken.

The tenant's agent testified that the tenant intends to repairs any damage caused during her tenancy and she always pays her rent on time and is not disrespectful towards other tenants.

The landlord asked the tenant if she stated that her child's father parks his car at the property and walks home as it is a long way to his alleged home. The tenant's agent responded that she said the tenant walks to his home and he parks his vehicle there while he goes to work. The landlord asked the tenant if the abandoned vehicle belongs to the tenants or her child's father. The tenant's agent responded that it does not belong to either of them. The landlord asked if he can tow that vehicle. The tenant responded yes it is not hers.

The tenant's agent asked the landlord if he did a move in condition inspection report at the start of the tenancy. The landlord responded, no he did not do one.

The landlord testified that the tenant has lied about the dog by saying it was only there for an hour when it was there for most of January. Each tenancy has their own tenancy agreement and some tenants are allowed to have pets. This unit had been newly renovated with new carpets and laminated flooring so no pets were allowed. The

landlord testified that one of the male occupants living with the tenant only moved out after the tenant was served this eviction notice but the other male occupant is still living there. The tenant has attacked the landlord's character without any evidence and the landlord has supporting letters from other tenants to confirm he is a good landlord.

The tenant's agent testified that the landlord cannot accuse the tenant of lying as it is not right. The dog only came for visits and does not live there yet there is nothing to say she cannot have a pet. The landlord said she could have a cat at the beginning of the tenancy and has seen the cat at her unit. The tenant has only had visitors that occasionally sleep over and the tenant's child's father visits frequently as they take turns watching their child while the other one works.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof and to establish the reasons for issuing the Notice to End Tenancy.

With this in mind I have carefully considered the evidence before me and I find that the landlord has insufficient evidence to show that the tenant has allowed additional occupants to occupy the rental unit. The landlord testified that he saw two males at the unit during January but only in the day and was not there at night to see if they continued to be there. The landlord's other tenant who kept a record of the comings and goings of the tenant's guest has only documented a series of dates and times a vehicle was at the unit without further evidence that this person actually resides there. The tenant has provided documentary evidence from her child's father stating the address where he lives and that he has only been a visitor at the tenant's unit and that he enjoys being an active father so does visit his son regularly and as he works nightshifts often

stays there until late. The tenant has provided a letter from a party who has stated that the tenant's child's father has rented a room from her since September 01, 2016.

It is important to note that 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 the onus to prove their claim and the claim fails.

As the landlord has the burden of proof in this matter then without further corroborating evidence to show that this person or another male person actually resides or resided in the tenant's unit and were not just guests or frequent visitors then the burden of proof is not met.

With regard to the landlord's claim that the tenant has significantly interfered with another occupant or the landlord regarding the mess in the laundry room and storage area; the tenant has again contradicted the landlord and testified that this mess was left by the former tenants upstairs and it was the tenant who cleared it up leaving only the landlord's possessions in the storage area. The landlord has insufficient evidence to show that the tenant created this mess by leaving clothing and garbage around the floors and around the furnace and hot water tank. The tenant's photographic evidence confirms that this area is clean and clear. Consequently, I find the landlord has insufficient evidence to meet the burden of proof regarding this issue as provided to end the tenancy.

With regard to the issue with the dog; the landlord has insufficient evidence to meet the burden of proof that this dog resides in the rental unit and is not simply a visitor to the building with the tenant's child's father. Again it is one person's word against that of the other. There is no term in the tenancy agreement that restricts the tenant from having a pet but in all cases the landlord's written permission should be gained first as a pet damage deposit is required to be paid.

With regard to the issue concerning damage to the unit or that the tenant has put the landlord's property at significant risk; while the tenant agreed some damage was caused during her tenancy to the entrance door and the kitchen cabinets, I am satisfied that the tenant is fully aware of her responsibility to ensure that any damage is repaired by the end of the tenancy and that the entrance door has been replaced; although this door may need to be updated if it is of an inferior quality to the original door or does not fit the space correctly. While the landlord has provided one witness letter that states that they saw that the unit had been renovated in August, 2014 and that the landlord had updated the flooring, had painted the unit and replaced the carpets. The landlord's photographic evidence does show some holes in the wall; however, the photographs showing alleged staining or pulls on the carpet are unclear and cannot be viewed for the purpose of making a decision in this matter. Therefore considering the damage to the walls this is insufficient to end a tenancy as any damages must be repaired by the tenant and this damage has not put the landlord's property at significant risk. I find therefore that this reason standing alone is not sufficient to end the tenancy.

I find there was insufficient evidence to prove the reasons listed on the Notice issued January 10, 2017. The landlord's witness letters only confirm that they have seen two males at the unit and a dog but do not confirm that these males resided at the unit for periods longer than can be determined as guests or that the dog was in permanent residence at the unit. Accordingly, I uphold the tenant's application and the One Month Notice is hereby cancelled and is of no force or effect.

I do however, caution the tenant to ensure that any damage is repaired and that she has the landlord's written permission to keep a pet and pay a pet damage deposit. I also caution the tenant that guests must not stay at the unit for extended periods of time and that the tenant must have the landlord's written permission to have another occupant in the rental unit. Furthermore, the rental unit is not provided for the tenant's guests to park their vehicles when they are not visiting the tenant and as such the tenant may only use parking for her own vehicle that she operates or parking for guests while they visit the

tenant. If the tenant fails to comply or there are other issues that arise after this hearing the tenant may jeopardize her tenancy.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated January 10, 2017 is cancelled and the tenancy will continue.

The tenant's application for an Order for the landlord to make repairs to the unit, site or property is dismissed with leave to reapply.

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 27, 2017

Residential Tenancy Branch

