



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUPERMEN PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause received January 27, 2017.

The Notice alleges that the tenants or a person permitted on the property by them has a) significantly interfered with or unreasonably disturbed another occupant or the landlord, b) has seriously jeopardized the health, safety or lawful right of another occupant or the landlord and, c) had put the landlord's property at significant risk.

The Notice also alleges that the tenants or a person permitted on the property by them have engaged in illegal activity that has or is likely to either adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or jeopardize a lawful right or interest of another occupant or the landlord.

Proof of any of those allegations is a lawful reason for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the "Act").

The Notice details the grounds as "excessive noise, police calls, partying, [P] is being violent to other tenants."

All parties attended the hearing, the landlord by its representative, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either tenant or their invitee has given good cause for eviction under the grounds outlined above?

Background and Evidence

The rental unit is a one bedroom apartment in a 120 unit apartment building. The tenancy started in the summer of 2015. There is a written tenancy agreement but neither side produced a copy. The monthly rent is currently \$725.00. The landlord holds a \$350.00 security deposit.

The landlord's representative Ms. R.S. has filed as evidence two handwritten notes said to be from tenants in the building complaining about the goings on in the rental unit in question and particularly the conduct of the tenant Mr. P.S.. Neither note has been signed, nor have the identities of the authors been revealed.

The admission of the two statements was refused at the hearing with the following explanation: A landlord is entitled to protect the identity of a complainant. Indeed, this adjudicative body will, itself, seek to ensure "informer privilege" in appropriate circumstances. However, when matters proceed to the adjudicative stage; to a dispute resolution hearing, and where a complainant's evidence is decisive evidence, there is no anonymity. A tenant is entitled to challenge the accusations forming the basis of the eviction notice. To do so, he or she is entitled to know not only the particulars of the accusations but also the source of the accusations in order to fairly mount a challenge to them.

The landlord's representative, the building manager, testifies that the problem is not the tenant Ms. B.T., it's Mr. P.S.. He is always very drunk. She says that eight months ago the police attended because Ms. B.T. was being "beaten" by a female guest.

She says that she herself has attended the rental unit within the last three months to have the tenants' music turned down. She did not indicate who, in anyone, was being unreasonably disturbed.

She has been informed by the police that they are investigating the rental unit.

She says a month ago a woman ran into the rental unit and the woman's husband began beating on the door.

She says that the owner of the building went to the rental unit three weeks ago regarding water problems and found pop cans cut in half and burned. Ms. R.S. considers this to be a sign of drug use.

She says there have been many police calls and that the tenant Mr. P.S. is fighting with other tenants. The other tenants do not feel safe and some are being awakened at night.

In response the tenant Mr. P.S. says he works days as a landscaper and tree faller. He denies any intravenous drug use. He says the building is an old one with very little sound damping. He says he does not own a stereo. He says he was unaware that he had been disturbing anyone and that his neighbours have told him he is not disturbing them.

He admits to a dispute with another tenant who repeatedly walks on the fire escape and disturbs him.

The tenant Ms. B.T. testifies, simply saying that the allegations made by the landlord are not true.

Analysis

The ending of a tenancy is a serious matter. A landlord will be required to provide clear and cogent evidence to support an eviction request.

In this case the landlord has not met that burden. Ms. R.S.'s evidence is largely second hand and provides minimal details about incidents, like; when the incident occurred or who was involved. A respondent facing eviction should not have to come to a hearing and be required to immediately defend himself or herself against general allegations of that nature.

On the competing evidence I find that the landlord has not proved on a balance of probabilities that either tenant or a guest has committed the acts alleged in the Notice. For that reason the Notice is cancelled.

In any event, s. 52 of the *Act* requires that a Notice to End Tenancy be dated. This one was not. Given the serious outcome of an eviction, strict compliance with the law will be required. The failure to comply with s. 52, I find to be a fatal defect for the Notice.

This decision is not meant to indicate that the tenants or either of them have not caused trouble in the apartment building; only that it has not been proved satisfactorily at this hearing. The landlord is free to issue another Notice for conduct occurring after the January 27, 2017 service of this Notice and it can be expected that at any future hearing, the landlord will attend better prepared to prove the allegations in that Notice.

The tenants are forewarned. Even the general evidence given at this hearing raises a strong suspicion that Mr. P.S. is abusing alcohol and creating a disturbance as a result. Suspicion, however, is not sufficient to justify an eviction.

Conclusion

The Notice to End Tenancy is hereby cancelled.

This decision was rendered orally after hearing 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: March 06, 2017

Residential Tenancy Branch

