



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause dated February 2, 2017. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenancy started on or about October 2015. The tenant is currently required to pay rent of \$650.00 on the first day of every month.

On February 2, 2017 the resident manager served a 1 Month Notice to End Tenancy for Cause upon the tenant with a stated effective date of March 2, 2017 ("1 Month Notice"). The tenant filed to dispute the Notice within the time limit for doing so. The landlord pointed out that the stated effective date is incorrect and should read March 31, 2017.

The 1 Month Notice indicates two reasons for ending the tenancy, as follows:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- 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 landlord submitted that on January 4, 2017 the police executed a search warrant in the rental unit and the tenant was arrested. The landlord contacted the police to determine the nature of the search and what was found. The police advised the landlord that they found and removed several types of illicit drugs (methamphetamine, fentanyl, cocaine, heroin, hash, and GHB); a significant amount of cash; and, a weapon from the rental unit.

As evidence, the landlord provided a copy of an email written by a police constable describing the search and seizure that took place on January 4, 2017. The email indicates the tenant was at the scene and arrested but released pending investigation. The email indicates that an investigation package is currently being prepared with recommendations for charges to the Federal Crown Counsel. The charges include those related to possession of several illicit drugs for the purpose of trafficking and unauthorized possession of a prohibited weapon. The email indicates the weapon was found adjacent to the door in the rental unit. The email indicates that an arrest will be affected once charges are approved by Crown Counsel.

The police constable's goes on to describe the tenant's boyfriend as being in custody on firearms charges since late 2016 and that he was associated to a number of police calls to the property in response to reports of a "man with a gun", and assault, and that there were seizures of other weapons, drugs, identification.

The landlord is of the position that the tenant is responsible for the possessions, activity and persons she permits in the rental unit regardless as to whether she is charged or held criminally responsible. The landlord submitted that the weapon and substances in the rental unit, along with the people the tenant has permitted in the rental unit, is not acceptable as it poses a significant threat to the safety and security of the landlord's staff and other tenants of the building.

The tenant acknowledged that her ex-boyfriend is well known to police and that she made a bad choice in choosing him as her boyfriend. The tenant stated that she broke up with her boyfriend on December 31, 2016, the same weekend he was put in jail. The tenant testified that the drugs and weapon found in her unit by the police on January 4, 2017 belong to her ex-boyfriend and that she did not know those things were in her unit. The tenant explained that she was in the process of getting her ex-boyfriend's possessions out of her unit, with the help of his friends, but that the police raided her unit before that could happen.

The tenant was also of the position that the charges against her had been "dropped" since she was released from jail later on January 4, 2017. However, the tenant also

acknowledged that she currently has a “no go” order in place that prevents her from going to the property.

The tenant submitted that she should not be evicted because there has been only one police raid on her unit and other units have had more raids than that.

Finally, the tenant argued her tenancy was reinstated because she paid rent for March 2017. The landlord acknowledged that rent was paid for March 2017.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on a Notice to End Tenancy it is sufficient to end the tenancy where one reason has been proven.

Where a landlord asserts that a tenant has engaged in illegal activity, the standard of proof that illegal activity has taken place is the civil standard: the balance of probabilities or more likely than not. This standard of proof is much lower than the criminal standard of beyond a reasonable doubt. Accordingly, a tenant may be evicted for illegal activity even if the tenant is not held criminally responsible. Therefore, the landlord must satisfy me that it is more likely than not that the tenant has engaged in illegal activity and in doing so has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

It is undisputed that several illicit drugs, cash and a weapon were found in the rental unit on January 4, 2017. This is after the tenant broke up with her boyfriend and he was taken to jail. I reject her claim that she was unaware of these prohibited items being in her unit as the weapon was found by the door of her rental unit. Further, the tenant's position that charges against her have been “dropped” is inconsistent with the email written by the police constable which indicates that charges are in the process of being forwarded to Crown Counsel for approval and that an arrest will be made once approved.

Whether the above described possessions were actually brought into the rental unit by the tenant, or a person she permitted in the rental unit, I am satisfied that the tenant has either engaged in illegal activity or has permitted a person on the property who was engaging in illegal activity including drug trafficking and possession of a prohibited weapon. As the tenant of the rental unit the tenant is responsible for the items and persons she permits in the unit. Thus, it is the tenant who bears the consequences of

choices made in permitting such activity in the rental unit. I accept the landlord's argument that that trafficking illegal drugs and possession a prohibited weapon puts the safety and security of the landlord's staff and other tenants at significant risk.

As to the tenant's other arguments, I am also of the view that police raids of other rental units do not exempt the tenant from application of the Act and does not form a basis to cancel the 1 Month Notice served upon her. I reject the tenant's argument that the tenancy was reinstated by way of rent payment for March 2017 since the tenant is entitled to possession of the rental unit for March 2017 and the landlord is entitled to receive rent for the month of March 2017.

In light of all of the above, I uphold the 1 Month Notice and I dismiss the tenant's request that I cancel it.

As pointed out by the landlord, the stated effective date on the 1 Month Notice is incorrect. Pursuant to section 47 of the Act, since the tenant is required to pay rent on the first of the month and the 1 Month Notice was served in February 2017 the effective date can be no earlier than March 31, 2017. As provided under section 53 of the Act the effective date automatically changes to read March 31, 2017.

Section 55 of the Act provides that I must provide the landlord an Order of Possession in certain circumstances. Section 55(1) provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The tenant's request to cancel the 1 Month Notice has been dismissed and upon review of the 1 Month Notice I am satisfied that it meets the form and content requirements of section 52. Therefore, I find the criteria of section 55(1) of the Act have been met and I provide the landlord with an Order of Possession that is effective as of 1:00 p.m. on March 31, 2017.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy has been dismissed.

The landlord has been provided an Order of Possession that is effective as of 1:00 p.m. on March 31, 2017.

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: March 09, 2017

Residential Tenancy Branch