



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WINGS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed April 4, 2017 for an Order canceling a 1 Month Notice to End Tenancy for Cause issued on March 30, 2017 (the "Notice") and more time pursuant to section 66(1) of the *Residential Tenancy Act* to make an application to cancel a Notice.

The hearing was conducted by teleconference on May 9, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant applied within 10 days of receipt of the Notice, more time pursuant to section 66(1) was not required.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a notice to end tenancy the Landlord must present their evidence first as the Landlord bears the burden of proving the reasons for ending the tenancy. Accordingly, the Landlord's agent, D.K. testified first.

The reasons cited on the Notice are as follows:

- the Tenant has allowed an unreasonable number of occupants in a rental unit;
- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to
 - damage to the landlord's property, and,
 - 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.

D.K. stated that the Landlord wishes to end the tenancy as they have received numerous noise complaints, specifically from the tenants above and below the subject rental unit regarding the Tenant. D.K. stated that the numerous complaints related to the "traffic" that comes through the rental unit and partying and loud music particularly at night. He also stated that a guest of the Tenant's damaged the rental building when he was unable to gain entry.

D.K. stated that the concerns relating to the Tenant have been going on since mid-year 2016. The Landlord s sent several warning letters, which were provided in evidence and which included the following:

- A letter dated December 9, 2016 regarding "increase in guests coming and going from [the rental unit]". In this letter the Landlord suggests the Tenant keep his music volume down and lay down some carpets or throw rugs to help absorb some of the noise".

- A letter dated February 3, 2017 wherein the Landlord again warns the Tenant that excessive noise or disturbances may result in termination of the tenancy.
- A letter dated March 28, 2017 letter regarding the February 5, 2017 incident wherein a gentleman leaving the rental unit tried to gain re-entry into the building and smashed the front window in the main entrance. The Landlord notes that the police were called on this occasion.

Evidence submitted by the Landlord confirms the police have been called as a result of noise complaints relating to the Tenant on the following dates:

- November 2016
- December 6, 2016
- January 23, 2017;
- February 5, 2017; and,
- April 21, 2017.

D.K. confirmed that in addition to the above incidents where the police attended, the Landlords has also received noise complaints on the following dates: September 7, 8, 9, and 10, 2016.

D.K. stated that the Landlord believes that the Tenant has been operating an escort service out of the rental unit. Evidence submitted by the Landlord included an ad for an escort agency which clearly noted the Tenant's phone number. This ad indicated the first post was January 21, 2017 and the last post was March 29, 2017. D.K. testified that on January 13, 2017, one tenant had six people come to his rental unit between midnight and 2:30 a.m. knocking on his door by accident as they were looking for the Tenant.

D.K. also stated that the Tenant has had numerous people stay with him under the guise of "roommates". He stated that the Tenant asked to have someone added to his lease in October but this situation deteriorated as the person never paid rent.

D.K. also stated that in a separate hearing before the residential tenancy branch, another renter, G.P., (whose rental unit is below the subject Tenant) made an application for an Order that the Landlord comply with the *Act* as G.P. believed the Landlord failed to take adequate steps to address the noise disturbance caused by the Tenant. A copy of the Decision dated December 19, 2016 was provided in evidence and included the following:

"The tenant testified that he has been significantly disturbed by another tenant living above his unit...

I am satisfied that the landlord is complying with s. 28 of the *Act* and has issued two breach or warning letters to the other tenant and informed the other tenant that if there are any further issues he will be served with a One Month Notice to End Tenancy for cause...

Consequently, no orders will be issued today; however, I do caution the landlord to ensure they continue to monitor and follow up on any further noise complaints and take any necessary action against any offending tenant."

The Tenant testified as follows. He stated that the complaints are within a period of time wherein he was trying out a roommate, T.S., and these issues stem from T.S. and his friends. The Tenant stated that T.S. was there from October 2016 through to February 2017.

The Tenant stated that the Landlord would not let T.S. be on the lease because there was another roommate that didn't work out prior.

The Tenant also stated that T.S. has fabricated the escort service. The Tenant stated that T.S. took photos of the Tenant from Halloween and has tried to have him evicted because the Tenant had to kick him out.

The Tenant further stated that he was at the rental unit some of the time, and when the stereo was being turned up too loud he tried to control his roommates but wasn't able to at times.

When I asked the Tenant to explain the noise complaints prior to October 2016 (the date he stated T.S. was in the rental unit) the Tenant stated it was "another roommate".

In response to the February 5, 2017 incident where a person alleged to be a guest of the Tenant's broke a window to gain access to the rental unit, the Tenant stated that he did not know this person and he was ringing his bell incessantly and he did not let them in. He stated that the police told him it was a "case of mistaken identity".

The Tenant stated that he would like to remain in the rental unit, he has removed the stereo and he has put carpet down to deal with the noise complaints.

In terms of the April 21, 2017 incident where the police were again called due to a noise complaint, the Tenant stated that he was not at the rental unit. He said that his friend, S., was at the rental unit and allowed T.S. to come to the rental unit

The Tenant stated that he tried to “gain control of the place, but T.S. was very large and pushy”. The Tenant also stated that the people he has allowed into his rental, S. and T.S. were “strangers who seemed nice” but have caused all of his problems.

In reply, D.K. stated that the Tenant did ask to have T.S. on the lease in December 2016, whom he referred to as his cousin that he had known for a long time. D.K. stated that H.M., was added to the rental unit on October 11, 2016 and that lasted only a few weeks. On November 16, 2016 the Tenant asked to add S.C. to his lease, and again that only lasted a few weeks.

Analysis

After careful consideration of the testimony and evidence of the parties, I find that the Landlord has provided sufficient evidence to show that the Tenant or a person permitted on the residential property by the Tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and
- put the landlord's property at significant risk.

In this case I find that the Tenant has received numerous written warnings that his behaviour, and that of his guests, may result in an end to his tenancy. I find the Tenant was provided sufficient warnings by the Landlord's agent to correct this behaviour and failed to do so.

I further find that the police have been called numerous times to address noise complaints relating to the Tenant. Despite these attendances, the noise disturbances have continued.

I accept the Landlord's evidence that other renters have complained about the noise coming from the rental unit, as well as disturbances such as having people attend their rental mistakenly as they attempt to gain entry to the Tenant's rental unit. As noted earlier in this my Decision, other occupants of the rental building have been so disturbed by the Tenant that

I do not accept the Tenant's evidence that all of the issues giving rise to the Notice originate from his guests' behaviour; however, even in the event I accepted his testimony in that regard, I note that the Tenant is responsible for his guests' behaviour.

Having ended the tenancy for the above reasons, I need not consider the other reasons set out in the Notice.

Conclusion

Therefore, I dismiss the Tenant's application to cancel the Notice. The tenancy will end in accordance with the *Notice*.

Pursuant to section 55(1) of the *Act* I find that the Landlord is entitled to an Order of Possession effective **two (2) days after service**. This Order must be served on the Tenant and may be filed in the Supreme Court and enforced as an Order of that Court.

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: May 10, 2017

Residential Tenancy Branch