

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on May 8, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on January 15, 2012 as a fixed term with an expiry date of July 30, 2012. The original tenancy agreement states the Tenant has to move out of the unit at the end of the fixed term tenancy agreement. The parties agreed new tenancy agreements with the same terms were made at the end of each fixed term tenancy. The Tenant said she did not receive a copy of the last tenancy agreement. The Landlord said a copy of the last agreement was given to the Tenant. It was noted that neither party submitted the current tenancy agreement but the parties agreed the current fixed term tenancy agreement expires on July 31, 2017. As well the current tenancy agreement states the Tenant has to move out at the end of the fixed term which is July 31, 2017. The Landlord said she does not like to end a tenancy by not renewing the tenancy agreement but that is a possibility if the Tenant is successful in cancelling the 1 Month Notice to End Tenancy for Cause. The parties agreed the Tenant's subsidized rent is \$462.00 and market rent is \$882.00 payable on the first of each month. The Tenant paid a security deposit of \$450.00 at the start of the tenancy.

The Landlord said she issued the 1 Month Notice to End Tenancy for Cause to the Tenant because she had received numerous complaints about the Tenant's behaviour and an unauthorized guest who was living with the Tenant for approximately 6 weeks. The Landlord said guests are allowed for a period of up to 2 weeks. The Landlord continued to say the complaints were that the Tenant was verbally abusing other tenants, the Tenant was making aggressive jesters to other tenants and the Tenant and her guest/boyfriend were dealing drugs. Further the Landlord said there were additional complaints about the Tenant coming and going at odd hours in the night and when she started her car it bothered other tenants in the complex.

The Landlord also said that the Tenant's daughter was removed from the Tenant's home by the Ministry.

The Tenant said the Landlord has made wrongful claims about her and the 1 Month Notice to End Tenancy for Cause should be cancelled. The Tenant said she has been a good tenant and she wants to continue the tenancy. The Tenant continued to say the Ministry did not remove her daughter and she has a witness from the Ministry to prove this. As well the Tenant said her guest/ boyfriend is no longer with her. The Tenant said she did not have anything to do with drug dealing and if the boyfriend did sell drugs it was not in the rental unit or on the rental property. The Tenant said the Landlord's claims about drugs are false about her. In addition the Tenant said her Ministry witness will testify that Ministry representative and the Police did an inspection of her rental unit and found no drugs, no sign of drugs and no sign of anyone living in the unit that was not authorized to be there. The Tenant said she has no criminal record and she has not done anything illegal.

The Tenant continued to say there are complaints by some tenants but the Tenant included 2 letters from other tenants supporting her as a good tenant and mother. The Tenant said the tenants who complained about her have been bullying her. The Tenant said the Tenant who complained about her using the other tenants parking space does not have a car and the Tenant stopped using the parking space as soon as she was told not to by the Landlord. The Tenant added her guest only used the parking space a few time.

The Landlord called her first witness. Witness M.K. said she found a small plastic bag with white powder in it in the hallway in front of her rental unit. The witness M.K. believes the package was drugs and that it belonged to the Tenant's boyfriend as she has seen him doing drug deals on the street. The witness said the package was given to the Police and the Police said they would look into it.

The Tenant said she had nothing to do with the package, there are other tenants who do drugs in the complex and there is no charges against her.

The Landlord called her second witness. Witness R.R. said the Tenant is coming and going all hours of the night and when she starts her car which is very loud it disturbs her as she is a light sleeper. The witness continued to say the Tenant's boyfriend was doing drugs and she saw him making drug deals on the street. Further the witness said the Tenant harasses and shouts aggressive language at the other tenants and she cackles at people in the rental complex. The witness said this is very disturbing.

The Tenant said she does go to the local gas station at night and her car is no louder than some of the other tenants cars. The Tenant said she has the right to come and go as she pleases. The Tenant call her witness from the Ministry as this witness was only available for a short time. The Tenant's witness W.C. said she was from the Ministry and worked with the Tenant. The witness W.C. said she and a Police constable inspected the Tenant's rental unit and found no sign of drugs or any unauthorized persons living in the unit. As well the witness W.C. said the Tenant's daughter was not removed from the home by the Ministry. The witness W.C. continued to say she also did a criminal records search on the Tenant as part of her inspection and found that the Tenant has no criminal record. The witness W.C. said the boyfriend was not part of her inspection as she understands the boyfriend is not living in the rental unit.

The Landlord called her third witness. Witness J.J. said she was a friend of the Tenant when she first moved in but a dispute between the Tenant and her regarding the witness's son ended the friendship. The witness J.J. continued to say she saw the Tenant's boyfriend dealing drug and he parked in her parking space. As well the Tenant starting her car in the middle of the night has disturbed the witness J.J. on many occasions. Further the witness J.J. said she found a man past out on the rental complex grounds near her unit and she believed he was on drugs. The witness J.J. said the man left the area after she saw him. The witness J.J. said the Tenant has cause problems in the rental complex and there is a restraining order on the Tenant against a past tenant.

The Tenant said the witness J.J. and her were friends and the Tenant gave the witness J.J. rides from work on occasion. The Tenant continue to say the witness J.J. has a loud car too and the Tenant does not park in her parking stall. The Tenant continued to say she is unaware on any restraining order on her and the Ministry inspection of her rental unit show no drugs, no criminal record, no unauthorized persons living in her unit.

The Tenant read a prepared statement in closing that described many unfortunate and disturbing events in her life and she said this 1 Month Notice to End Tenancy for Cause is wrong. The Tenant said the guest/boyfriend is gone so if there was drugs and drug dealing with the guest/boyfriend it has ended. The Ministry witness W.C. confirmed the Tenant's testimony that no drugs or signs of drugs were found in the unit, she has no criminal record and there are no unauthorized persons living in her rental unit. Further the Tenant said the issues between her and the other tenants are a result of the other tenants bullying her and they are trying to get her evicted from the rental complex.

The Tenant's advocate said they want to have on the record the Tenant has no criminal record and there is no restraining order on the Tenant.

The Landlord said in closing there is lots of drama around the Tenant and many complaints about the Tenant's behaviour and the Tenant's guests. The Landlord said she believes the Tenant may not have been dealing drugs but she believes the Tenant's guest/boyfriend was drug dealing and the Tenant was responsible for this. Further the Landlord said she does not believe the other tenants are bullying the Tenant but there is issues between the tenants and the Tenant. The Landlord requested the 1 Month Notice to End Tenancy for Cause be upheld and the tenancy ended.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord and other tenants in the rental complex. The Landlord has indicated on the Notice to End Tenant that the Tenant or a guest of a Tenant has engaged in illegal activity that has

adversely affected the landlord and other occupants and has jeopardised right and interests of the landlord and other tenants. The Landlord and the occupants in the complex have given testimony that they believe the Tenant's guest/boyfriend was doing and dealing drugs. The Landlord and the witness testified that they saw the guest/boyfriend allegedly doing drug deals on the street but the Police were not called and there is no corroborating evidence submitted that the Tenant or her guest were doing illegal activity in the rental unit. The Tenant provide witness testimony that there was an inspection by the Ministry and the Police of her rental unit and no illegal drugs or illegal activities were found. For a claim of illegal activities by a tenant to result in an eviction the Landlord has to prove illegal activities have taken place in the rental unit or on the rental complex. The burden of proving a claim lies with the claimant and when it is just the claimant's word against that of the respondent's that burden of proof is not met. I find that the Landlord has not proven that the Tenant or the Tenant's guest was engaged in an illegal activity; therefore I find this reason of the Tenant engaging in illegal activities on the Notice to End Tenancy does not meet the level of support needed to prove grounds for an eviction.

Further the Landlord has indicated the other reason to support ending this tenancy is the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The Landlord and the Landlord's witnesses said the Tenant or the Tenant's guest were drug dealing, the Tenant uses aggressive language towards the other occupants, the Tenant parked in another tenants parking stall and the Tenant's behaviour to the other occupants is aggressive. The Tenant and her witnesses said no drugs or unauthorized persons where in the Tenant's rental unit and the issues between the other occupants and the Tenant were because of the other occupants were bullying the Tenant. In any tenancy it is the responsibility of the tenants in a rental complex to try to get along. When this is not possible the Landlord must intervene. If a occupant is **directly impacted** by another tenants behaviour and it **seriously** jeopardizes the occupants health, safety or lawful rights then the Landlord may issue a Notice to End Tenancy for Cause. Section 47 of the Act uses language which is written **very strongly** and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupants.

In this case it is my finding that although there is disputes between the tenants the reasons given for ending the tenancy have not reached the level of **directly impacting** the other occupants **to an unreasonable level, to a significance or to a seriousness** required by section 47 of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month

Notice to End Tenancy for Cause date April 27, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated April 27, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: June 14, 2017.

Residential Tenancy Branch