



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order allowing a lock change by the Tenant - Section 70; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

Although the Tenant claimed an order for a lock change, no evidence or argument was made to support this claim during the hearing and I am unable to discern evidence or argument on this claim in the Tenant’s submissions. As the Tenant may have omitted this evidence without intention, I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 16, 2016 and is currently a month to month tenancy. Rent of \$2,696.20 is payable on the 15th day of each month. At the outset of the tenancy the Landlord collected \$1,300.00 as a security deposit. On June 20, 2017 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice"). The Notice sets out details of a strata complaint in relation to the Tenant using the unit for short term rental purposes and has advertised the unit for this purpose on an online short term rental site.

The Landlord states that they have no evidence of any illegal act and no evidence of an unreasonable number of occupants in the unit. The Landlord states that they have only indirect evidence of noise being made in the unit and or people coming in and out of the unit causing a disturbance. The Landlord states that the Tenant has left holes on the wall beside a dart board and is damaging the Landlord's investment property and putting the Landlord's property at significant risk. The Landlord states that they received a letter from the Strata that the Tenant is using the unit for short term rentals. The Landlord provides a copy of this letter and print outs of an advertisement of the unit for short term rental.

The Witness, a neighbour of the Tenant, states that at 4:40 a.m. on October 2016 the Tenant was making a lot of hammering noise that woke the Witness up. The Witness states that this noise was again made the same day at 5:00 p.m. The Witness states that a complaint was made to the body that investigates noise complaints in the building and as no investigation was made the Witness sent an email to the building administration about this noise. The Witness states that although other noises have been heard from the unit since then no complaints have been made to either the Strata or the Landlord. The Witness states that at 9:50 p.m. on June 28, 2016 she heard the Tenant's door close and observed 3 men at the elevator with 2 sets of luggage.

The Tenant does not deny having an advertisement online for short term rentals however the Tenant states that this advertisement was placed as market research for his own decision to buy property similar to the rental unit. The Tenant states that no short term rentals have ever occurred. The Tenant provides a letter from the site host indicating that no reservations or rental monies were ever processed by the site host. The Tenant states that he intended to remove the advertisement some time ago and did remove the advertisement after the complaint by the Landlord. The Tenant states that the persons seen leaving the unit on June 28, 2017 by the Witness was himself and two of his colleagues. The Tenant states that he was being driven to the airport on that occasion by his colleagues for a trip to Toronto where his family resides. The Tenant states that since all of his family lives in Toronto he makes several trips there. The Tenant provides a copy of his airfare ticket and states that the departure time on that ticket coincides with the departure time from the unit as stated by the Witness. The Tenant states that at no time has he sublet his unit. The Tenant states that he works most of the day and only has friends over occasionally. The Tenant does not know what the Witness refers to in relation to the noise in October 2016 as the Tenant does not do hammering of any kind. The Tenant denies making noise or otherwise disturbing or interfering with anyone. The Tenant states that he has never received any noise complaints from anyone.

The Landlord states that the Witness informed them that the person depicted by a photo on the short term rental advertisement was not one of the persons who left the unit on June 28, 2017.

Analysis

Section 47(1) provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia:

- there are 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, or, inter alia,
 - put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that, inter alia, has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent.

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

The Landlord put the above noted reasons on the Notice as reasons to end the tenancy, and given that the Landlord has no evidence of any illegal activity or of too many occupants, I find that these two reasons on the Notice are not valid to end the tenancy.

The Landlord's evidence of noise comes only from the Witness who only gave evidence of making one complaint in October 2016. This complaint was not followed up. I do not consider one complaint sufficient to establish significant interference or disturbance. Although the Witness states that she was disturbed by other noises, given that there is no evidence of any complaints from this Witness to anybody about these noises I find that the noises, if they occurred, could not have been significant. For these reasons and given the Tenant's evidence of no noise and no receipt of any noise complaints, I find on a balance of probabilities that the Landlord has not substantiated significant interference or unreasonable disturbance. The only evidence of damage to the unit is that of small holes on a wall beside a dart board and I consider that this damage can be easily remedied by the Tenant, if the Tenant or any of his guests caused this damage, prior to the end of the tenancy. As a result, I find that the Landlord has not substantiated any significant risk to the unit.

Finally, although the evidence of the advertisement tends to support that the unit is being sublet I also consider the Tenant's plausible evidence in response that the advertisement is merely for market research. There is no evidence to support that the Tenant actually sublet the unit for any amount of time. The evidence of persons leaving the unit with luggage is not evidence of anything that occurred prior to the issuance of the Notice and cannot therefore be considered as part of the evidence relied on for giving the Notice. Nonetheless, I accept the Tenant's credible and supported evidence of his own departure on that date with his colleagues. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the unit is being sublet. For the above reasons, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this entitlement.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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: August 25, 2017

Residential Tenancy Branch