



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, 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 restricting the Landlord’s right to enter the rental unit - Section 70;
and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Roommate provided no evidence.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to restrictions on the Landlord’s right of entry?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy started on December 16, 2016. Rent of \$900.00 is payable on the first day of each month. On July 31, 2017 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”).

The Landlord states that the “illegal activity” reason indicated on the Notice was selected in error.

The Landlord states that the rental unit is the upper level of a house that contained a basement used by the Landlord as storage. The Landlord states that he attends the property about once a month for a few days to do work such as yard work including the improvement of the lawn, fence installation, driveway installation, and a double garage door installation. The Landlord states that he is improving the property and that the neighbours and town are very happy about the improvements. The Landlord states that he does not give the Tenant’s notice of his attendance at the property as he does not enter their unit and as the yard is common property. The Landlord states that he cannot attend the property everyday as he lives in another city.

The Landlord states that the Tenant caused extraordinary damage to the unit by applying grout over wall damage and then applying red paint to the grouted area of the wall. The Landlord states that the Tenant also kicked a hole in another wall and in a door. The Landlord states that he did not ask the Tenant to make repairs as the Landlord knows that the Tenant is not capable of making those repairs. The Landlord states that he saw the living room damage in August or September 2017 when he went to the unit to collect rent and that a week later was shown more damage by the Tenant’s son, the Roommate. The Landlord provided photos of the damage. The Landlord states that the Tenants told him that a visitor to the unit caused the damage. The Landlord states that he was on the property putting down sod when he was shown the damage. The Tenant states that the walls were damaged in late August or early September and that the Tenant understands that the Tenant is responsible for repairs and would like to make the repairs herself.

The Landlord states that the Tenant was then given a notice for inspection of the unit for July 8, 2017 and additional damage was found with a hole in a wall and a door. The Landlord states that again the Tenant was not asked to make repairs. The Tenant

states that they tried to make repairs in July 2017 and that the Landlord has not seen the repairs made to the damaged areas. The Tenant states the Landlord only looked at the repairs on October 20, 2017. The Landlord states that the Tenant did not tell him of any repairs and did not check to see if any repairs were done.

The Landlord states that the Tenant has guests that are constantly drunk and disruptive and are taking advantage of the Tenant who is not otherwise causing problems. The Landlord states that in March 2017 the Tenant's son approached the Landlord's worker who was digging the fence and threatened the worker by waving a weed digger and telling the worker to get off the property. The Landlord states that the worker was not actually on the Landlord's side of the property at the time. The Landlord states that he was inside the garage at the time and had to come out and tell the son to "cool it". The Landlord states that in April 2017 he hired a contractor to install the garage door and that the Tenant's son was drunk and yelled at the contractor while the contractor was working on the door. The Landlord states that the police were called and the son was arrested.

The Landlord states that on May 4, 2017 the Landlord was at the garage when one of the Tenant's drunken visitors threatened the Landlord. The Landlord states that the police were called and the situation de-escalated as a result. The Landlord states that the neighbours have complained to both the Landlord and the police. The Landlord states that on two occasions the police have told the Landlord that the Landlord is in danger of having the property deemed a nuisance property due to the repeated calls to the property. The Landlord states that the police have advised the Landlord to seek the eviction of the Tenant. The Landlord states that every time he is at the unit there are visitors that are drunk, screaming, fighting and arguing. The Landlord states that the disturbances were constant in June 2017 with the neighbours calling the police. The Landlord states that the Tenant's guests are taking advantage of the Tenant who does not have the capacity to kick them out. The Landlord states that he made an access to information request to the police but has not yet received the materials. The Landlord

states that the police informed him that they attended the unit 6 times between June 22 and July 27, 2017. The Landlord states that the rent has been paid for November 2017 and asks for an order of possession for November 30, 2017 if the Notice is found to be valid.

The Tenant states that she does not know how many times the police were called, that they were called twice in May and no police have been called since May 2017. The Tenant states that all has been peaceful and quiet throughout June and July 2017. The Tenant states that they were not given use of the yard or the driveway and that they knew at the outset of the tenancy that the Landlord was using the basement of the house for storage. The Tenant states that the Landlord is present every day working in the yard and that although they are not disturbed by his presence they want the Landlord to give them notice when he attends the property.

The Landlord provides copies of two letters sent to the Tenant detailing the complaints of disturbance and damage to the unit.

Analysis

Section 47(1)(d) provides that a landlord may end a tenancy by giving notice to end the tenancy where the tenant or a person permitted on the residential property by the tenant has:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

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 to end tenancy and that at least one reason must constitute sufficient cause for the notice to end tenancy to be valid.

The Landlord's evidence of damage to the unit, although disturbing, cannot be considered extraordinary as it is mostly not uncommon wall damage. I note that the Landlord gives initial evidence of damage to the unit occurring after the issuance of the Notice however given the Landlord's remaining evidence of dates and damage I consider the date of the initial damage to have been given in error. The Landlord's oral evidence of disturbance by the Tenant's guests is detailed and taken together with evidence of damage to the interior of the unit, that the Tenant does not dispute was done by a guest, I accept that the Tenant is allowing disruptive guests to attend the unit. The Tenant's oral evidence that all has been peaceful since May 2017 is not persuasive and does not hold a ring of truth. I therefore accept the Landlord's persuasive and preferred evidence that the Tenant's son threatened the Landlord's workers, that the police have been called to the unit repeatedly and that the property could be deemed a nuisance due to the repeated and disruptive presence of the Tenant's drunken guests. As a result I find on a balance of probabilities that the Landlord has substantiated that a person permitted on the property by the Tenant has caused the Landlord an unreasonable disturbance and has put the Landlord's property at significant risk. The Notice is therefore valid and the Tenant must move out of the unit.

As the tenancy has been ended I dismiss the Tenant's claim for a restriction on the Landlord's right to attend the rental unit. Out of an abundance of caution however and unless an emergency exists I urge the Landlord to provide the Tenant with written notice of entry should the Landlord intend to enter the rental unit or property surrounding the rental unit prior to the end of the tenancy or the move-out inspection. As neither of the Tenant's claims has been successful I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act

provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the validity of the Notice I find that the Landlord is entitled to an order of possession.

I therefore grant the Landlord the requested order of possessing for 1:00 p.m. on November 30, 2017.

Conclusion

The Notice is valid and I grant the Landlord an order of possession effective 1:00 p.m. on November 30, 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: October 31, 2017

Residential Tenancy Branch