



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*.

Both the tenant and the corporate landlord's representatives, T.M. and T.D. (the "landlords") attended the hearing. The tenant was assisted at the hearing by his mother, C.T. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenant acknowledged receipt of a copy of the landlord's 1 Month Notice to End Tenancy which was posted on his door on July 30, 2017. Pursuant to section 88 of the *Act*, the tenant is found to have been duly served with the landlord's 1 Month Notice.

The landlords acknowledged receipt of the tenant's Application for Dispute Resolution on in person on August 14, 2017. Pursuant to section 89 of the *Act*, the landlords are found to have been served with the tenant's Application for Dispute Resolution. Both parties confirmed that receipt of each other's evidentiary packages. Pursuant to section 88 of the *Act*, the landlords and tenant are found to have been duly served with the each other's evidentiary package.

Issue(s) to be Decided

Can the tenant cancel the landlords' notice to end tenancy for cause?

Background and Evidence

A copy of the residential tenancy agreement was supplied to the hearing as part of the landlords' evidentiary package. The tenant confirmed that this tenancy began in July 2011 and

that he paid rent of \$915.00 per month. A security deposit of \$412.50 collected at the outset of the tenancy continues to be held by the corporate landlord.

The landlords explained that they were seeking an Order of Possession, based on a 1 Month Notice to End Tenancy for Cause. Specifically, the landlords were pursuing this notice because they allege that the tenant or a person permitted on the property by tenant has;

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

And –

The tenant has;

- engaged in illegal activity that has, or is likely to damage the landlord's property;
- 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.

During the course of the hearing the landlords said that they had issued a 1 Month Notice to End Tenancy for Cause because of a serious incident that occurred on July 22, 2017. All parties acknowledged at the hearing that the tenant had been stabbed by an intruder, leading the tenant to escape from the property via the balcony. Following this struggle between the tenant and this attacker, blood splatter was found on the balcony, the curtains and at the entrance of the door.

The landlords explained that because of the severe nature of this incident that they felt the other tenants in the building faced serious security issues. As part of their evidentiary package, the landlords supplied 3 anonymous letters and 1 signed letter detailing the events of July 22, 2017. One anonymous letter dated September 24, 2017 alleges that the tenant is selling drugs and questions if there will be a shooting, while another anonymous letter dated October 5, 2017 expressed "concern with recent occurrences in [the] building," asked that I as the arbitrator "drawn my own conclusions," and stated that "my wife and I do not feel secure in our home of 9 years any longer."

In addition to these letters, the landlords supplied a newspaper article detailing the nature of the attack, along with oral testimony describing the damage to the property which resulted from the tenant's blood.

The tenant agreed that a violent incident had occurred on July 22, 2017; however, he argued that he had been a model tenant, paying his rent on time, and often spending long periods of time away from the rental unit. Furthermore, the tenant described the events of July 22, 2017 as a random attack which was a result of his accidentally allowing an unknown person access to the building. In his written submissions and timeline, the tenant said that he did not endanger any other persons in the building and that his attacker had been apprehended. As part of his

evidentiary package, the tenant submitted a letter from his neighbour who said she had been living next to the tenant for over 7 years and “never felt uneasy having him next door.” She continued by saying, “I actually feel much safer knowing he is here...even with that [the stabbing] happening I still feel safer in my home knowing he is there.”

Analysis

The landlords have applied for an Order of Possession based on a Notice to End Tenancy for Cause. On their Notice to End Tenancy, the landlords cited four reasons for its issuance.

The landlords allege that the tenant or a person permitted on the property by tenant has;

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

And –

The tenant has;

- engaged in illegal activity that has, or is likely to damage the landlord's property;
- 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.

I will begin by analyzing the second part of this notice.

Residential Policy Guideline #32 states, “The term *illegal activity* would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.”

Guideline #32 continues by stating;

The party alleging the illegal activity has the burden of proving that the activity was illegal...the illegal activity must have some effect on the tenancy...if a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity.

The test of knowledge attributable to the tenant is the “reasonable person” test. If a reasonable person would be expected to know or ought to know that illegal activity might occur, the tenant will be responsible whether or not the tenant actually possessed this knowledge.

Based on the facts presented at the hearing and in evidence, I do not find that the events of July 22, 2017 fall within the definition of illegal activity on the part of the tenant. Being the victim of a crime is not a violation of any law, statute or bylaw. However, the question remains whether the tenant ought to have known that the person he permitted in the rental unit or on the residential property was going to engage in illegal activity.

During the course of the hearing the parties agreed on the fact that the tenant had allowed an unknown person on the premises who later attacked him. Little evidence presented at the hearing detailed any past issues that the tenant had with guests that he had entertained in his rental unit, or with persons he had permitted on the property. There were no records of any previous warning letters that had been sent to the tenant for any perceived illegal activities by himself, his guests or persons he permitted on the property. Furthermore, I find it difficult to conclude that the tenant would have reasonably allowed a person on to the property whom he would have expected to cause him personal harm. Based on the evidence and testimony presented at the hearing, I find that the tenant has not engaged in illegal activity that has, or is likely to damage the landlord’s property and that the tenant has not 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 second portion of the landlords’ Notice to End Tenancy concerns allegations that that the tenant or a person permitted on the property by tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlords explained that the incident of July 22, 2017 was of grave concern to themselves and to other tenants in the building. As part of their evidentiary package the landlords provided letters from 2 tenants describing their fears. I do not place great weight on the anonymous letters that were submitted as part of their package. These letters contain allegations against the tenant that are unsupported by facts and engage in speculation on the part of their authors. The one letter which is signed provides merely a description of the events of July 22, 2017 and fails to describe any danger that was felt on behalf of the resident.

The tenant supplied a letter from his neighbour which stated that she was aware that the tenant had been attacked in the apartment building and that despite this event she felt safe with him in the building and in fact “never felt uneasy having him next door.”

I do not find that the evidence presented at the hearing supports the landlords' allegations that the tenant or a person permitted on the property have significantly interfered with, unreasonably disturbed or seriously jeopardized the health and safety of the other occupants of the landlords. Aside from this July 22, 2017 event no evidence was presented of any other incidents involving the tenant, nor was any evidence submitted that the tenant had previously been warned or cautioned for having disturbed the other tenants or occupants.

For these reasons, the landlords' application for an Order of Possession is dismissed.

Conclusion

The tenant was successful in cancelling the landlords' Notice to End Tenancy for Cause. This tenancy shall continue until it is ended in accordance with the *Act*.

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 26, 2017

Residential Tenancy Branch