Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause dated July 12, 2017. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The hearing process was explained to the parties and the parties were permitted to ask questions. All parties requested that this decision be sent to them by email. The parties provided or confirmed the email addresses at which they would like to receive the decision.

I was provided a considerable amount of oral and written submissions and evidence, all of which I have considered in making in this decision; however, with a view to brevity in writing this decision I have only summarized the parties' positions and referred to only the most relevant facts and evidence.

Issue(s) to be Decided

1. Should the subject 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. If the 1 Month Notice is upheld, are the landlords entitled to an Order of Possession?

Background and Evidence

The one year fixed term tenancy started on March 1, 2017 and the tenant paid a security deposit of $500.00. The tenant is required to pay rent of $1,050.00 on the first day of every month. The rental unit is described as a two bedroom basement suite in the lower portion of a house. The upper level of the house, along with a portion of the

lower floor, is also tenanted by tenants who have resided at the property for over 1.5 years (hereafter referred to as “the upper tenants” for ease of reference).

The 1 Month Notice to End Tenancy for Cause (“the Notice”) that is the subject of this dispute was sent to the tenant by registered mail on July 12, 2017. The Notice has a stated effective date of August 31, 2017 and indicates the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the 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,
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to:
    - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

In the “Details of Cause” section of the Notice the landlords wrote: “According to section 28 of RTA this Tenant has violated another occupant’s right to quiet enjoyment and privacy as outlined in the attached document.”

The Notice was accompanied by a two page type-written letter signed by the upper tenants and sent to the landlords by the upper tenants. The letter is dated July 10, 2017 and entitled “Loss of Quiet Enjoyment” (herein referred to as “the letter”). The letter is quite lengthy and I will not reproduce it here; however, I will paraphrase the key elements. The upper tenants state that their right to quiet enjoyment, as provided under section 28 of the Act, has been breached by the actions of the tenant. The upper tenants indicate the tenant had made multiple and unreasonable requests of them to them directly via notes, emails and texts and through the landlords after the tenant was told to cease communication with the upper tenants and direct any issues to the landlords. The upper tenants go on to describe how the tenant went on to write an email to the supervisor at a particular school requesting the school reject the upper tenants as host families due to noise disturbance, refusal of the upper tenants to communicate with the tenant, and that he wold report the upper tenants and the school to the tenancy board if the school did not comply (herein referred to as “the email”). The upper tenants submit that the tenant’s actions were intended to affect the upper tenants’ right to have students in their home. The upper tenant describes experiencing much

anxiety over the tenant's actions and apparent lack of boundaries as to the measures the tenant will take to get what he wants.

The landlords stated the upper tenants were available to be called to testify during the hearing. Neither party requested that they be called. I did not find it necessary to call the upper tenants as there was no question raised as to whether the upper tenants had authored the letter of July 10, 2017 and the letter was clearly written.

The email the upper tenants referred to in their letter was provided as evidence by the landlords. The email is dated July 6, 2017. I noted that the tenant had also referenced the email in his written submissions and appeared to reproduce the email in his package; however, when I compared the tenant's version to the email to that provided by the landlords, it appeared that the tenant had provided an edited version with some sentences omitted. Accordingly, I confirmed with the tenant that the email included in the landlords' evidence package is an accurate copy of the email he wrote to the school.

Below, I have summarized the landlords' reasons for seeking to end the tenancy and the tenant's responses.

The landlords' submitted that shortly after the tenancy started the landlords and the tenant had a disagreement over the telephone with respect to performing a move-in inspection. Both parties provided consistent testimony that since that disagreement, on March 8, 2017, the tenant instructed the landlords to communicate with him in writing only and that all communication between the landlords and tenant since then has been by email. Numerous emails exchanged between the parties were provided as evidence and referred to by the parties.

The parties provided consistent submissions that the tenant had complained about the noise or actions of the upper tenants or their occupants before writing to the school on July 6, 2017, including the following:

- The upper tenant's dog jumping and walking around during the night (the upper tenants re-homed the dog after the tenant complained).
- Someone walking around with hard bottomed shoes on the hardwood floors upstairs.
- The upper tenant playing the guitar and stomping after 9:00 p.m. (the upper tenant ceased playing guitar after 10:00 p.m. after the tenant complained)
- The upper tenants running an air conditioner and fan after 11:00 p.m.
- The upper tenants power washing the upper deck.

- Noise from the upper tenants having two homestay students.

The tenant was of the view that the above complaints were very few and far apart despite the relatively short duration of this tenancy.

On June 18, 2017 the tenant asked the landlord whether the upper tenants would be having more homestay students in the future. The landlord enquired with the upper tenants and learned that they intended to have more students in September 2017. The landlord communicated this information to the tenant via email. The tenant informed the landlord that he thought the landlords should prohibit the upper tenants from having more homestay students as it greatly increased the noise levels in the house. The landlord indicated that the upper tenants were not prohibited from having additional occupants. The tenant then wrote the email to the school on July 6, 2017.

The landlords were of the position the tenant's email breached the privacy of the upper tenant since it identified the upper tenants. The landlords were of the position that the tenant's actions constitute libel as some statements were inaccurate and had the intention and potential to cause harm the upper tenants.

The tenant was of the position that he was merely enquiring about the school's policy with respect to permitting homestay students to occupy a house where there are other tenants. However, the tenant also indicated that he has every right to lodge a complaint or express concerns to the school.

The tenant stated that he has had homestay students in the past and that the compensation is $1,700.00 per month per student, which amounts to $3,400.00 per month if the upper tenants have two.

Analysis

The landlords served the tenant with a 1 Month Notice to End Tenancy for Cause in a manner that complies with the Act. Upon review of the Notice, I am satisfied that it is in the approved form and is duly completed. Accordingly, I find the Notice meets the form and content requirements of the Act. Since the tenant filed to dispute the Notice within the allowable time limit, the landlords have the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Although there is more than one reason indicated it is sufficient to end the tenancy where one reason is proven.

Based on the sequence of events presented to me, it is clear to me that the tenant's email to the school is the most significant event that resulted in the upper tenants' letter to the landlords and the landlords decision to serve the Notice upon the tenant. The parties provided opposing interpretations of the tenant's email. The landlords submitted the tenant's statements amount to libel of the upper tenants and had significant potential to harm the upper tenants' reputation and ability to host students. The tenant took the position that the purpose of the email was to merely enquire about the school's housing policy and communicate to the school that other tenants may be disturbed by homestay students.

One of the reasons for ending the tenancy, as indicated on the Notice, is that the tenant has: "seriously jeopardized the health or safety or lawful right of another occupant or the landlord". This is one of the grounds for ending a tenancy provided under section 47 of the Act. The landlords confirmed that the upper tenants are not prohibited from having additional occupants under their tenancy agreement. Accordingly, I find it is the upper tenant's lawful right to have additional occupants and if the tenant's actions significantly jeopardized the upper tenants' right to have additional occupants there is sufficient cause for ending the tenancy.

Upon review of the entire email, as provided as evidence by the landlords, and not the edited version provided by the tenant, I find the tenant's statements in the email were knowingly inaccurate and misleading and had significant potential to cause significant financial harm to the upper tenants. I find it likely that the tenant wrote this email in an attempt to interfere with the upper tenants' ability to host students. I find the tenant's actions much more than an enquiry into the school's student placement policy. I make these findings when I considered the following:

1. The tenant identified the names and address of the upper tenants in the email which inconsistent with merely enquiring about the school's housing policy or to inform the school other tenants may be disturbed by homestay students.
2. In the email the tenant states: "I must request that [name of upper tenants] not host students at this address in September 2017". This statement is inconsistent with the tenant merely enquiring about the school's housing policy or to inform the school that other tenants may be disturbed by homestay students. I also note that this statement was omitted from the edited version of the email provided by the tenant and I suspect it was omitted because it is obviously inconsistent with the tenant's position concerning the intent of the email.
3. In the email the tenant states: "…from what I understand [name of upper tenants] did not ask or tell the owners they were going to host students". I find this

statement is knowingly incorrect. The landlord had informed the tenant of the upper tenant's intention to host students before the tenant wrote the email. In order for the landlord to obtain this information she had communicated with the upper tenants about it. I find it likely that the only reason for making this statement is to paint the upper tenants as being deceitful.

4. The tenant states that if the upper tenants do host students in September 2017 he intends to file an Application for Dispute Resolution with the Residential Tenancy Branch to request an Arbitrator not allow the upper tenants to have additional occupants and that an Arbitrator may "decide anything". An Arbitrator must resolve the dispute between the landlord and the tenant before the Arbitrator and may issue orders that impact their tenancy agreement; however, an Arbitrator may not issue an order respecting other parties or another parties' tenancy agreement that is not before the Arbitrator. Not only are the tenant's statement inaccurate but I find they have the potential to create concern over the upper tenant's ongoing housing stability which is likely a significant factor in deciding whether to grant a host stay application.
5. The tenant acknowledged that hosting students yields a considerable amount of income. I find it reasonable to expect that a reduction to monthly income to the tune of $3,400.00 would have a significant impact on the upper tenants.

In summary, the upper tenants have a lawful right to have additional occupants, including paying homestay students, and I find the tenant intentionally provided misleading and knowingly false information concerning the upper tenants to an institution that provides paying homestay students to the upper tenants. Accordingly, I find I am satisfied that the tenant's actions significantly jeopardized the lawful right of another occupant (the upper tenants) and that is a ground for eviction. Therefore, I uphold the Notice and dismiss the tenant's application.

Section 55(1) of the Act provides as follows:

> **55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
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> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
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> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having upheld the Notice and dismissed the tenant's application and having been satisfied the Notice meets the form and content requirements of the Act, I find the criteria of section 55(1) have been met and I provide the landlords with an Order of Possession. As requested by the landlords the Order of Possession shall be effective on October 31, 2017.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause dated July 12, 2017 is dismissed and the landlords are provided an Order of Possession effective at 1:00 p.m. on October 31, 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 06, 2017

Residential Tenancy Branch