



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

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*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord’s agents, B.M. and A.F. appeared at the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant confirmed receipt of the landlord’s Notice to End Tenancy posted on her door on August 2, 2017. Pursuant to section 88 of the *Act* the tenant is found to have been duly served with the landlord’s Notice to End Tenancy.

The landlord confirmed receipt of the tenant’s application for dispute resolution, “a few days later.” While unable to confirm exactly which date it was received, the landlord said that they had no issue with the receipt of the tenant’s application for dispute. Pursuant to section 89 of the *Act*, the landlord is found to have been served with the tenant’s application for dispute resolution.

Issue(s) to be Decided

Can the tenant cancel the landlord’s Notice to End Tenancy? If not, is the landlord entitled to an order of possession?

Can the tenant recover the filing fee associated with the application?

Background and Evidence

A copy of the Residential Tenancy Agreement submitted to the hearing as part of the landlord's evidentiary package demonstrated that this tenancy was for a fixed length of time, running from February 1, 2017 to January 31, 2018. Rent is \$2,700.00 per month, and security and pet deposits of \$1,350.00 collected at the outset of the tenancy, continue to be held by the landlord.

Agents for the landlord explained that they were seeking an end to this tenancy because they felt that the tenant had;

- Breached a Material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

And

Because the 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
- Put the landlord's property at significant risk.

The landlord explained that the tenant has had numerous conflicts with the other residents of the rental unit, and that these residents have complained to the landlord about the tenant's disturbances. Specifically, the landlord detailed incidents involving the tenant's use of the laundry after the allowed operating hours, smoking in the rental unit and on the property, uncollected dog waste in the property, continuous loud noises emanating from the tenant's suite, and an event concerning the tenant's son urinating in the back yard. The landlord said that these continued disturbances led two tenants on the bottom floor of the home moving out.

During the course of the hearing the landlord's agents explained that they had followed up with the tenant regarding complaints about her behaviour on several occasions via email and by telephone. As part of the landlord's evidentiary package, the landlord provided an email from a tenant on the bottom floor of the rental unit dated August 1, 2017 describing a complaint of the dog waste in the yard. In addition to this email, the

landlord presented emails from the bottom floor tenant complaining about the tenant's use of the laundry room after hours and the state in which the tenant left the laundry room on July 19, 22, & 26, 2017. The final portion of the landlord's evidentiary package was an email from another resident of the rental unit to the landlord describing an event which occurred on June 1, 2017 in which the tenant's guest (who at the hearing, was identified as her son), urinated in the yard of the property.

On June 20, 2017 the landlord sent an email to all of the property's residences explaining that the laundry is a shared space, reminding them that it is their responsibility to ensure an appropriate level of cleanliness is maintained, and informing them of the rules surrounding the use of the laundry room.

The tenant did not deny that an incident involving her son urinating in the backyard occurred; however, she explained that it was a one-time event that occurred when he had locked himself out of the home. The tenant explained that she enjoyed a good relationship with the other residents of the building and felt that events reported by the landlord had been over-exaggerated.

At the hearing, the tenant explained that she had spoken to the other residents of the home and that all of the parties had come to an understanding regarding the use of the laundry and regarding the incidents of smoking. She said that she understood that the laundry was regulated by certain hours and acknowledged that her brother on two occasions had done some washing outside of the allowable hours. The tenant denied making excessive noise and explained that the home was an older home in which the resident downstairs has a bedroom that is directly below her living area and tv room. She attributed any noise complaints that he may have issued from the normal sounds associated with her day to day living. Finally, the tenant said that she had instructed her son to smoke at the end of the property, away from the home.

Analysis

The landlord has applied for an Order of Possession based on four grounds. I will examine the issue of Breach of Material term, and then focus my analysis on the three remaining grounds.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case

the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

Based on the evidence the landlord produced at the hearing, I do not find any documentation that was provided to the tenant indicating that she was given written warnings informing her that she may be in violation of a material term of her tenancy agreement, or where a deadline for rectifying the situation was proposed. At the hearing, the tenant acknowledged receiving one phone call from the landlord's agent, A.F.; however, she explained that she did not receive any written warnings. Although the landlord filed an email in her evidentiary package from the downstairs tenant to the landlord dated June 20, 2017, I find little evidence was presented at the hearing by the landlord demonstrating any written warnings to the tenant regarding a breach of a material term. For these reasons, I dismiss this portion of the landlord's application.

The landlord has also indicated on the Notice to End Tenancy, that the tenancy should be ended because;

The 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
- Put the landlord's property at significant risk.

At the hearing the landlord explained that the tenant's behaviour had been very bothersome to the other residents of the rental home. Furthermore, she stated that the tenant's son had urinated in the yard, smoked in the rental unit and that the tenant herself had failed to pick up dog waste from the property. The landlord argued that all of these instances of disruption had led the downstairs tenants to break their lease and vacate their unit. Additionally she said that these behaviours, when examined as a whole significantly interfered with the ability of the other occupants to enjoy the home.

After examining the evidence presented as part of the landlord's evidentiary package and considering the landlord's testimony, I find it difficult to conclude that the tenant, or a person permitted on the property has significantly interfered with, or unreasonably disturbed another occupant, has seriously jeopardized the health and safety or lawful right of another occupant, or has put the property at significant risk. The landlord has provided a single complaint letter from another occupant of the property describing an issue involving an alleged laundry theft, and an incident regarding the tenant's son urinating on the property. While the landlord testified that she has received numerous complaints from the other occupants of the rental unit, the landlord failed at the hearing to produce copies of these complaints, could not accurately identify the dates on which they had been received, and was unable to conclusively direct me to a manner in which the tenant had significantly put the property at risk.

The tenant's in actions in neglecting to pick up dog waste and in using the laundry beyond the allotted hours cannot be considered a significant interference of another occupant, nor can they be seen to have seriously jeopardized the health or safety of another occupant, or put the landlord's property at significant risk when no evidence was presented to the hearing regarding how, or when the other occupants of the home were disturbed by the tenant's actions. For these reasons, I allow the tenant to cancel the landlord's notice to end tenancy.

As the tenant was successful in her application, she may recover the \$100.00 filing fee associated with this application. In lieu of a Monetary Order, I direct the tenant to withhold \$100.00 from a future rent payment on **one** occasion.

This tenancy shall continue until it is ended in accordance with the *Act* or under the terms of the fixed-term tenancy agreement.

Conclusion

The tenant was successful in cancelling the landlord's notice to end tenancy.

The tenant may withhold \$100.00 from a future rent payment on **one** occasion in satisfaction for a return of the filing fee under section 72 of 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: November 1, 2017

Residential Tenancy Branch