



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to section 47 of the *Residential Tenancy Act* ("the Act").

The landlord's agent, the building manager for the residential premises and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord D.M. (the landlord) stated that they would be the primary speaker for the landlords. I instructed the tenant to have the witnesses remain outside of the room until called upon to testify.

While I have turned my mind to all the documentary evidence, including the testimony of the parties and witness statements, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) personally served to the landlord on August 17, 2017. In accordance with section 89 of the Act, I find the landlord was duly served with the Application.

The landlord testified that they personally served the tenant with their evidentiary package on October 19, 2017. The tenant confirmed receipt of the landlord's evidence. In accordance section 88 of the Act, I find the tenant was duly served with the landlord's evidence.

The tenant confirmed that they did not submit any evidence.

The tenant confirmed that they received the One Month Notice on August 11, 2017. In accordance with section 88 of the Act, I find the tenant was duly served with the One Month Notice.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord gave written evidence that this tenancy began on November 01, 2015, with a current monthly rent of \$860.00, due on the first day of each month. The landlord testified that they currently retain a combined security and pet deposit in the amount of \$530.00.

A copy of the landlord's One Month Notice dated August 11, 2017, was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by September 30, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

Tenant has allowed an unreasonable number of occupants in the unit

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.*
- *put the landlord's property at significant risk.*

The landlord also submitted the following evidentiary material:

- A copy of 'Schedule "A" 'listing additional terms of the tenancy agreement;
- A copy of an incident report dated February 21, 2017, submitted to the landlord by Occupant A, who lives in a different rental unit in the building. Occupant A states in the incident report that it appears homeless people are staying in the tenant's rental unit, are freely coming and going from the building, suspects drug use due to a strange smell radiating from the rental unit and mentions a person who was seen staying at the rental unit, who is living out of a burgundy van as well as sleeping in the tenant's rental unit;
- A copy of an email from Occupant B, who lives in a different rental unit in the building, to the landlord dated August 09, 2017, sent at 10:04 p.m., advising the landlord that the tenant is letting strangers into their apartment at the time of the e-mail and that a person, who was in the tenant's apartment, is running around the parking lot going crazy and that the police have been called about it;
- A copy of an e-mail from Occupant B to the landlord, dated August 10, 2017, describing an incident where the police were involved regarding a person who was running around the parking lot and in the building like a maniac looking for keys. Occupant B states that the police officer confirmed that this person was high but could not do anything because "the tenant has the right to allow people into the building and her suite"; and
- A copy of an e-mail from Occupant B to the landlord, dated August 11, 2017, describing a person, who Occupant B had a previous interaction with, seen leaving the tenant's rental unit. In the e-mail Occupant B states that he believes this person has a key to the building and the tenant's rental unit;

I note that I am only able to consider events that took place prior to the One Month Notice being served to the tenant on August 11, 2017, as those are the reasons for and are directly related to the issuance of the One Month Notice. For this reason I have not considered any evidence regarding events that took place after August 11, 2017.

The landlord testified that they took over management of the building on February 01, 2017. The landlord further testified that there have been issues regarding rental units on the ground floor of the residential premises since taking over management. The landlord stated that vagrant guests have been accessing the building with keys and codes even though they are not occupants or tenants. The landlord recounted that they changed the key codes to access the residential premises in February of 2017.

The landlord submitted that the building manager has been having issues with vagrant guests bringing bikes and grocery carts into the residential premises and who have been warned by the building manager. In one such incident, the landlord stated that the building manager was pushed aside and verbally abused by a person who was seen leaving the tenant's rental unit with a bike early one morning. The landlord submitted that the tenant has been given verbal warnings regarding people in the building but that the tenant denies that these people in the building were the tenant's guests. The landlord stated that another tenant found someone in the laundry room doing drugs. The landlord further stated that in one of the e-mails provided as evidence, the middle unit referred to is the tenant's rental unit.

The landlord testified that the police were called when someone was let into the residential premises, allegedly by the tenant, who the police confirmed was high on something. The landlord stated that the police could not do anything.

The building manager testified that she verbally warned the tenant on numerous occasions regarding not giving keys to homeless people or letting them stay in the tenant's rental unit. The building manager further testified that she has asked these people directly to leave and then they come back. The building manager stated that she saw another person who had a key to the building and pushed their way past the building manager to go into the tenant's rental unit. The landlord recounted that they disabled the key code in February and re-keyed the building sometime in May of 2017.

The tenant testified that they feel the building manager is prejudiced against the tenant's friends. The tenant stated that the building manager is harassing her friends and her brother. The tenant further stated that she does not do drugs and does not have drug addicted friends. The tenant submitted that her friends watch movies and play games when they visit. The tenant testified that she does not have loud parties although her friends do talk loudly when visiting the rental unit.

The tenant called her brother R.B. as a witness. Witness R.B. stated that they are a class one driver who is regularly employed and occasionally helps out his sister. Witness R.B. testified that a couple of weeks ago he came to see his sister, who was not answering her phone or the door, and so he went to his sister's window to see if his sister was home. Witness R.B. further testified that that the building manager intercepted him and was very aggressive towards him. Witness R.B. submitted that in the summer, when he came to the residential premises to pick up his sister, the building manager went to him and told him that he could not park where he was and that if he did not move his car she would have it towed. Witness R.B. stated that he has visited his sister and it appears to him that no one else is living in the rental unit. Finally Witness R.B. stated that he has played cards with one of his sister's friends that regularly visit the rental unit and that person does not do drugs. Neither the tenant nor the landlord had any questions or comments regarding Witness R.B.'s affirmed testimony.

The tenant then called Witness J.C. to provide testimony. Witness J.C. stated that they are a social worker and have known the tenant for six months although other members on her team have known the tenant for longer and were surprised that the tenant was facing eviction. Witness J.C. testified that the

tenant does not associate with homeless people. Witness J.C. further testified that she has visited the tenant's home, which is immaculate, and you can hear the noises of other people living in their rental units as the walls are thin. Witness J.C. saw the building manager when visiting the tenant, and was advised by the building manager that they were having problems at the residential premises. Neither the tenant nor the landlord had any questions or comments regarding Witness J.C.'s affirmed testimony.

The tenant wanted to make a statement at the end of the hearing that she does not know anyone in a burgundy van, her rental unit is very clean and she is not giving keys to anyone.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on August 14, 2017, and since I have found that the One Month Notice was served to the tenant on August 11, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find that the landlord bears the burden of demonstrating, on a balance of probabilities, that there are an unreasonable number of occupants in the unit. I further find the landlord bears the burden of demonstrating, on a balance of probabilities, that 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, or put the landlord's property at significant risk.

I have reviewed all documentary evidence and affirmed testimony and I find that the landlord has failed to provide sufficient evidence to prove that there are an unreasonable number of occupants in the unit. I find that the testimony from all parties involve different men coming and going from the unit at different times of the day, including the landlord who refers to having problems with guests of the tenant but there is no evidence or testimony that any of these people live in the rental unit.

I find that the February 21, 2017 incident report states that it appears homeless people are staying in the rental unit but there is no indication from Occupant A of the duration of these people staying at the rental unit and that it was a continuous occupancy. I find that Occupant A said that she believes that a guest of the tenant has keys to the building and the rental unit, but in this same e-mail Occupant A said that they saw this person leaving the rental unit, not that they were using keys to enter the building.

I find the landlord and tenant's tenancy agreement states that the definition of an occupant is a person who stays in the rental unit for 14 cumulative days. I find that there is no evidence or affirmed testimony that any of these guests have stayed in the rental unit for 14 cumulative days and could be considered occupants. I find that there are no inspection reports from the landlord indicating evidence of an additional occupant living in the rental unit. I accept the testimony of Witness R.B., who testified that they have visited the rental unit and that there is no evidence of anyone living there, other than the tenant.

I have reviewed all documentary evidence and affirmed testimony and I find that, based on a balance of probabilities and the above, the landlord has failed to provide sufficient evidence that 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, or put the landlord's property at significant risk.

I find that the only significant incident referred to prior to the One Month Notice being issued to the tenant is of a person, who Occupant B states was a guest of the tenant, running around the building and the parking lot like a maniac. There is no evidence or indication that this person significantly interfered with anyone, jeopardized the health or safety or lawful right of another occupant or landlord or put the landlord's property at significant risk.

I find that the police were called due to this person acting in a certain manner around the residential premises but, as the landlord testified, the police could not do anything. I find that as Occupant B states in her e-mail to the landlord, "that the police officer confirmed that this person was high but could not do anything because "the tenant has the right to allow people into the building and her suite." I find that, if this person had done something significant as noted above, it would be reasonable to conclude that the police would do something about it or that the landlord would further document those actions with Incident Reports as has been previously done. I find that Occupant B only indicates that this person was running around the parking lot and the building like a maniac looking for keys, not that they were negatively interacting with anyone or attempting to damage the residential premises or engaging in behaviour that would put others at risk.

Although it is not before me, it may be that the tenant's guests are breaking the rules of the residential premises when they come onto the property, although I find there is no evidence submitted as to what the rules are concerning bringing bikes into the residential premises or whether there is signage to this effect around the residential premises. I further find that there are no rules provided in evidence regarding giving a key to a friend. I note that the appearance of being homeless does not conclusively mean someone is homeless and, further to that, it has little bearing on the issue at hand as section 9(2) of the landlord's Schedule A states "The landlord must not impose restrictions on guests..."

It is the tenant's responsibility to make sure that her guests are abiding by any rules set out by management and to be mindful of the noises coming from their rental unit, but I find that there is no record of written warnings or documentation of verbal warnings given to the tenant regarding the tenant or her guest's behaviour when at the residential premises.

I find the landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the tenant.

For these reasons, the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant is successful in her Application.

The One Month Notice is set aside and this tenancy will 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: November 10, 2017

Residential Tenancy Branch