



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy, to restrict the Landlord's right of entry into the rental unit and for the Landlord to comply with the Act, regulations and tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery to the Landlord's office on October 18, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. Should conditions be set on the Landlord's right of entry to the Tenant's rental unit?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

The Tenant said this tenancy started on August 15, 2015 and the Landlord said the tenancy agreement says the tenancy started August 1, 2015. Market rent is \$983.00 and the Tenant pays a subsidized rent in the amount of \$510.00 on the first day of each month. The Tenant paid a security deposit of \$350.00 as the start of the tenancy. The Tenant said no condition inspection report was completed at the start of the tenancy. The Landlord said they have a signed copy of the move in condition inspection report but did not submit the report as they thought it did not have a bearing on the matter at hand.

The Landlord said they have received a number of complaints about the Tenant's behaviour and after giving the Tenant many verbal and written warnings they issued a 1 Month Notice to End Tenancy for Cause dated October 5, 2017 with an effective vacancy date of October 31, 2017. The Landlord said the Notice was issued one day after a unit inspection by the Landlord because the Landlord saw drug paraphernalia in the Tenant's rental unit. The Landlord said she saw tin foil and hooters on the table and the Landlord believes these items are used for smoking crack or heroin. The Landlord said she also thought she smelled smoke in the unit that would result from smoking drugs. The Landlord submitted 4 written warning letters to the Tenant prior to the Notice to End Tenancy, 3 letters after the Notice and 3 complaint letters by other tenants about the Tenant's behaviour. As well the Landlord submitted the site manager's notes tracking unauthorized guests staying in the Tenant's rental unit. The Landlord said the Tenant is living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has allowed an unreasonable number of occupants to live in the rental unit, the Tenant has significantly interfered with or unreasonably disturbed other occupants, the Tenant has seriously jeopardized the health and safety of other occupants, the Tenant has put the Landlord's property at significant risk and the Tenant has engaged in illegal activities that are likely to damage the Landlord's property and affect the quiet enjoyment of other occupants. .

The Landlord said there were a number of incidents that led to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). During the October 4, 2017 unit inspection drug paraphernalia was seen by the Landlord in the Tenant's rental unit. The Landlord said she suspected that a female guest of the Tenant brought the drug paraphernalia into the rental unit. As well the Landlord said she smelled the smoke from drug smoking crack or heroin in the Tenant's rental unit.
- 2). During the time period between July 4, 2017 and August 15, 2017 the site manager S.K. said the Tenant had a guest living in the rental unit. The Landlord said the Tenant is only allowed a guest for 14 nights a year in the tenancy agreement and this guest was in the unit for over a month. The Landlord submitted a number of the site manager's notes on the tenancy including a note dated August 3, 2017 saying that all is good at the Tenant's unit for now. The site manager said because there is no resident manager he could not say for sure how many nights the Tenant's guest stayed over night.
- 3). The Landlord submitted three complaint letters two were unsigned because the occupants did not want their name involved and one was from a tenant that moved out of the rental complex. The complaints were about the Tenant's behaviour as noisy, using drugs and alcohol and being inappropriate. It should

be noted the police were called because of one of the altercations with the occupant of #108 but no charges were filed. Further all the complaints are about the Tenant's noisy behaviour and the Tenant possible use of illegal drugs but there was no physical violence by the Tenant.

The complaint letter from the former tenant M.H. said the Tenant was noisy and one occasion she could smell the Tenant smoking crack on his balcony.

The two unsigned complaint letters said the Tenant was noisy and his guest buzzed their units asking to be let in because they were staying at the Tenant's rental unit.

4). Further the site manger S.K. said he saw the Tenant have guests in the rental unit who brought 2 dogs into the rental complex. The site manager said this is not allowed. The site manager said this only happened once.

5). The site manager S.K. continued to say he has seen the Tenant late at night in the hallways in an inebriated stated. The site manger S.K. said he is sure of this as he has first hand knowledge of alcohol issue through his knowledge of AA. Site manager S.K. said he has talked to the Tenant many times about his behaviour with little to no success. The site manager S.K. said when he asked the Tenant about drug and alcohol use the Tenant said he drinks alcohol but he does not do drugs. Further the site manager S.K. continued to say it has been reported that the Tenant has propped the back door open with a rock to let people into the building and this is a safety concern to the Landlord and other occupants.

6).The Landlord said the people the Tenant has allowed into the rental unit have made the other occupants of the rental complex feel unsafe. The Landlord said in one incident the Tenant gave a key to the rental complex to a guest. The Landlord said this is not allowed under the tenancy agreement.

The Landlord said for these reasons they issued the Notice to End Tenancy and they are requesting the tenancy is ended.

The Tenant said the Landlord's claims based on hearsay and are untrue. The Tenant made the following statements regarding each of the points the Landlord made:

1). The Tenant said the drug paraphernalia was the female guests but they were not smoking drugs in the unit. The female guest had just emptied her purse on the table. The Tenant said he does not use hard drugs but he does smoke marijuana on occasion. Further the Tenant said many of the people living in the rental complex use drugs and it is not fair to single him out for drug use alone. The Tenant said he has smelled drug smoke in the rental complex on many occasions.

2). The Tenant said that he was helping a friend D. and the friend D. did say in the Tenant's rental unit on occasion during the period of July 4 to August 15, 2017, but he was not living in the unit and he did not stay there continuously. The Tenant said his friend D. used the laundry and stayed over a few nights as he needed some help. The Tenant said when site manger S.K. told him to stop having D. stay in his unit D. left and did not stay over again. .

3). The Tenant said the complaint letters are not true and the two that are not signed could have been written by anyone. The Tenant continued to say the third letter is from a former tenant M. H. and is untrue, made up and is not relevant. The Tenant said he is well liked in the complex and he is helpful as he has shovelled snow and helped with yard work. Further other tenants have come to him when there is a problem in the building because there is no resident manager.

4). The Tenant made no comments about the dogs in the rental complex.

5).The Tenant said he understood that marijuana smoking is allowed in the rental complex if it is done on the balcony or outside the building. Further the Tenant said many occupants in the building prop the back door open when they go to the store or for other reasons so he should not be singled out again for this issue.

The Landlord said there are other tenants in the building with medical marijuana licenses but they are asked to smoke their marijuana away from the building.

6). The Tenant said he has had some guests at his unit as he is a helpful person. To support this the Tenant included in his evidence thankyou letters and letters of support from the food bank were he volunteers and the Salvation Army were he volunteers and a personal friend. The Tenant's evidence say the Tenant is helpful and says he is of good character.

7). Further the Tenant said he or his guests have not caused any damage to the rental unit or rental complex.

The Tenant said the Landlord's Notice to End Tenancy is not true and the Landlord's evidence is mostly hear say therefore the Landlord's claims do not prove the reasons on the Notice. The Tenant said the 1 Month Notice to End Tenancy for Cause dated October 5, 2017 should be cancelled.

Further the Tenant said the Landlord has issued a number of 24 hour Notices and then not showed up so the Tenant believes the Landlord's right of entry should be restricted and the Landlord should show up when a 24 hour Notice is given.

The Landlord said they have issued 2 or 3 24 hour Notices to the Tenant and if the Tenant was not there they did not enter the unit.

Further the Tenant said he check off that the Landlord should comply with the Act, regulations and tenancy agreement because this was his first application and he was told to do it.

In closing the Tenant said the stuff the Landlord is saying is all made up. The Tenant said other occupants of the building are scared of the Landlord so they were reluctant to testify for the Tenant. The Tenant said the Landlord has no real proof as the complaint letters are made up or by a tenant who has moved out.

The Landlord said in closing the Tenant has had guests for more than 14 days which is a violation of the tenancy agreement. Further the Landlord has see drug paraphernalia in the Tenant's unit and smelled drug smoke in the Tenant's unit. The Landlord said the Tenant is letting people in to the rental complex who do drugs and are disruptive to the rental complex. The Landlord said they have given the Tenant 4 warning letters and the Tenant has not corrected his behaviour.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. The Landlord and site manger have verbally spoken to the Tenant many times about his behaviour, his guests and his guests staying over night in his unit. The Landlord has issued 4 warning letters about the Tenant's behaviour and the Tenant's guests before issuing a Notice to End Tenancy. As well the Landlord has provided 3 complaint letters to support the Landlord's claim that the Tenant's behaviour is in breach of the tenancy agreement and the tenancy should end.

The Tenant said the Landlord's complaint letters are made up. Two are unsigned and the third is from a previous tenant so the letters are not valid proof. As well the Tenant said he complied with the site manager request to stop having D. as an overnight guest in August, 2017. This is supported by the site manager's note dated August 3, 2017.

Further the Tenant said other tenants in the rental complex use alcohol and drugs so he should not be singled out as the only tenant that is causing issues. The Tenant said he and his guests have not caused any damage to the rental unit or complex. The Tenant said the Landlord has not proven the reasons on the Notice to End Tenancy therefore the Notice should be cancelled.

When a Landlord issues a Notice to End Tenancy for Cause it is the Landlord's responsibility to provide evidence that proves the reasons on the Notice. I have carefully reviewed the evidence and testimony and it is my findings that. For a complaint letter to meet the level of corroborative proof it needs to be signed and dated

or have some means of verifying the content. Two of the three complaint letters are unsigned and one is not dated. The third letter from M. H. is not dated and it is unclear if there is a signature or if the name is just printed. For these reasons I accept the Tenant has established grounds to question whether complaint letters meet the requirement level of credibility for corroborative proof. Consequently, I find the letters of complaint do not have the credibility to meet the burden of proof to support the Notice.

Further it appears from the testimony and submitted evidence that the Tenant has had guests stay over night in his rental unit. The Tenancy Agreement allows the Tenant 14 night a year to have over night guests. The site manger said he is aware of the Tenant having overnight guests but he is unable to track the dates or the exact number of nights. The Tenant said he has had guests but **no one has lived in the unit** and he has complied with the site manager's request stop having guest D.at the unit in August, 2017. The site manager's notes indicate that he believes the Tenant was having additional guests over night again in mid August, 2017. From the discussion of the Tenant's overnight guests, I accept the Tenant has had over night guests but it is unclear how many nights the Tenant has had guests and if they were occupants living in the unit. As the Tenant is allowed 14 nights of over night guests, I find the Landlord has not met the burden of proof to prove how many nights the Tenant has had over night guests and if they were occupants or guests in the rental unit. Consequently, I find the Landlord has not met the burden of proof to establish the Tenant has had an unreasonable number of occupants living in the rent unit.

With regard to the Landlord's claim that the Tenant is engaged in illegal activities that put the Landlord's property at risk and has adversely affected or unreasonably disturbed other occupants; I find although there is circumstantial evidence and testimony that the Tenant or his guests may have had illegal drugs in his unit, the finding of drug paraphernalia does not met the level of proof required to prove the Tenant was engaged in illegal activity. I find the Landlord's evidence does not meet the level of proof require to prove the Tenant was engaged in illegal actives.

All tenancies require cooperation between the tenants and landlords. In this situation it appears the communication and actions of the parties have deteriorated. I accept the Landlords testimony and evidence that the Tenant has created issues in the rental complex but I find the issues and the Tenant's behaviour have not met the level of seriousness required to support an eviction. Consequently the parties will abide by the following decision. Section 47 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47 of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date October 5, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The Tenant should be aware that this decision although it is in the Tenant's favour could be used as evidence if the Tenant's behaviour escalates to a more serious level.

With regard to the Tenant's request to restrict the Landlord's right of enter, I order the Landlord to comply with the Act when entering the Tenant's rental unit or when issuing a 24 hour Notice to enter the Tenant's rental unit.

Further I find the Landlord has complied with the Act, regulations and tenancy agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated October 5, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: January 09, 2018

Residential Tenancy Branch