



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LAT MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order permitting the tenant to change the locks to the rental unit; and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant attended the hearing with a support worker and gave affirmed testimony. An agent for the landlord also attended, gave affirmed testimony and called one witness who gave affirmed testimony. The landlord's agent was also accompanied by 3 other agents of the landlord, none of whom testified or took part in the hearing. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the tenant withdrew the application for an order permitting the tenant to change the locks to the rental unit, and withdrew the application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 1, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$472.00 per month is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$280.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a town-house suite within a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on December 13, 2017 the landlord caused the tenant to be served with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided and it is dated December 13, 2017 and contains an effective date of vacancy of January 31, 2018. The reasons for issuing it state:

- 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.

The landlord's agent testified that the tenant has been making noise complaints about a neighbouring tenant in the complex since January, 2017. Attempts were made by the landlord to settle the disputes, and mediation was scheduled, but that didn't happen because the tenant refused to participate. Some of the complaints were about dog noise from the neighbouring tenant's rental unit, which is not permitted by the landlord. On November 23, 2017 the tenant reported more noise from the neighbouring suite, and the tenant's letter states she tried to address the issue, however it seems the conversation between the tenants became heated. The neighbouring tenant closed her door and the tenant kicked it causing damage to the door. The door has since been repaired, and the tenant paid for those repairs.

However, the tenant signed a Crime Free Housing Addendum which indicates that a single violation is serious and amounts to material non-compliance, and unless otherwise required by law, does not require that criminal charges be laid before the landlord can issue a notice to end the tenancy. It states that the resident or persons permitted on the property "...shall not engage in any criminal activity on the premises or property, including, but not limited to:

- (a) any drug related criminal activity (including smoking marijuana)

- (b) solicitation (sex trade workers and related nuisance activity)
- (c) street gang activity
- (d) assault or threatened assault
- (e) unlawful use of a firearm
- (f) any criminal activity that threatens the health, safety or welfare of the landlord, or other residents or persons on the residential property or residential premises.”

The tenant reported to police that she was attempting to stop the door from closing, and the neighbouring tenant says the tenant kicked it in, and police confirm that force was used against the door. Photographs of the door have been provided as evidence for this hearing.

Copies of email exchanges have also been provided for this hearing, and the landlord's agent testified that the tenant had agreed to meet with the neighbouring tenant and an agent of the landlord. The tenant offered another time, but the neighbouring tenant was not available, so the landlord's agent emailed the tenant with additional dates, but received an intimidating type of response. The landlord's agent didn't pursue it any further and didn't believe that as a result of the tenant's response that mediation would work.

The neighbouring tenant is fearful and has applied for a transfer to another rental unit. Both tenants have reported concerns of safety due to the other, but the tenant has taken it to the extreme and the neighbouring tenant is a willing participant and trusts the landlord to deal with it. The neighbouring tenant had a guest who would bring a dog for a visit, but agreed to no longer allow that and has complied to the landlord's knowledge.

The landlord has also tried to see if housing is available for the tenant in another location to try to minimize the impact, but none are available.

The landlord's witness is the neighbouring tenant and testified that on November 23 2017 the witness arrived home about 6:00 p.m. with her autistic son from daycare. The witness' son was playing around and making some noise, and after about 45 minutes the witness heard someone knocking very hard, which went on for about 20 minutes. The witness finally went out and saw the tenant, who became very aggressive telling the witness to keep quiet. The witness explained that her son had a disability and that the witness could not keep him from making noise all the time. The tenant said she didn't care. The witness tried to close the door, and the tenant kicked the door and broke the hinge.

The witness called police, and her son was terrified and crying. The witness' blood pressure was very high and couldn't calm down, and was having a panic attack to the point that she had to call her son's father to pick him up and take him to his place. The

witness' son was afraid the tenant would attend again, make the witness cry, and he still talks about it and is still afraid someone will kick the door again.

The tenant testified that she has exhausted all avenues. The tenant wrote a letter to the Tenant Relations person of the landlord in January, 2017, which was the first complaint.

The tenant's son was terrified and he couldn't sleep. The tenant knocked on the door of the neighbouring tenant because it was bed time, but the neighbouring tenant swore at the tenant and yelled at her. The tenant has PTSD and constant yelling and banging triggers it. The tenant did not know that the neighbouring tenant's son was autistic, and believed the child or the neighbouring tenant was being hurt. The tenant attempted to deal with it by way of a formal process, sending letters and emails to the landlord and also called police. Due to all the noise and all of the tenant's attempts, the tenant felt her concerns were not being addressed, or the concerns for the neighbouring tenant. It sounded like they were being beaten.

The tenant knows she made a bad decision kicking the door however she intended to stop the door from closing, not to kick it, and not noticing that it had fully latched. The tenant has not apologized because she was told not to contact the neighbouring tenant. It was a one-time incident, the tenant is sorry, and testified that she is not a violent person.

The tenant also testified that previously, a woman was murdered on the rental complex, and the tenant called police and her social worker. The tenant is also taking counselling. The tenant offered to pay for the damages, and at first the landlord's agent refused, but later requested it and the tenant paid without delay.

The tenant provided the landlord with 7 recommendations as alternatives to eviction.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute:

- 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.

The parties agree that some mediation or other methods have been attempted, but do not necessarily agree on what cooperation there has been to actually meet and settle the dispute between the tenant and the neighbouring tenant. However, the parties also agree that the tenant has been complaining by way of formal letters and emails since January, 2017, which is almost a year from the November 23, 2017 incident that prompted the landlord to issue the notice to end the tenancy.

I have reviewed all of the letters and emails exchanged and provided by the parties, including the statement of the neighbouring tenant, which confirms that the tenant kicked the door “just as it closed.” The tenant’s letters to the landlord complain of smoking, noise, pets, and additional occupants among other things. I accept that the landlord has taken measures to attempt to mediate the situation, however I am not satisfied that the tenant ought to lose her housing when the tenant took measures to mitigate without success. I am satisfied that the neighbouring tenant was in breach of the tenancy agreement throughout the period of January through November, 2017 respecting dogs, noise, smoking and additional occupants.

The landlord relies on the Crime Free Addendum to the tenancy agreement, but I am not satisfied that any criminal activity took place. Therefore, I cancel the notice and the tenancy continues.

I also find it necessary to exercise my authority under Section 62 of the *Residential Tenancy Act*:

62 (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The *Residential Tenancy Act* requires a landlord to ensure that tenants have enjoyment of their rental units, and I order that the tenant comply with Section 28 by ensuring that the tenant does not do anything that might contravene the right of any other tenant as set out in Section 28:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated December 13, 2017 is hereby cancelled and the tenancy continues.

Pursuant to Section 62(3) of the *Residential Tenancy Act* I hereby order the tenant to ensure that the actions of the tenant do not contravene the right of any other tenant as set out in Section 28 above or the tenancy agreement.

This order is final and binding and may be enforced.

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: February 26, 2018

Residential Tenancy Branch