



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAROLD HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This teleconference hearing was scheduled in response to an application from the Tenants to cancel a Notice to End Tenancy for Cause (the “One Month Notice”). One of the tenants (the “Tenant”) was present at the conference call hearing representing both applicants, as was the agent for the landlord (the “Landlord”).

Service of the Notice of Dispute Resolution Hearing was confirmed and both parties also confirmed receipt of the other party’s evidence.

Neither party submitted the One Month Notice to End Tenancy for Cause (the “One Month Notice”) as evidence for this hearing, but it was sent to the Residential Tenancy Branch along with a “summary of late payments and noise disturbances” after the hearing at my request. In accordance with rule 3.19 of the Rules of Procedure, an Arbitrator may provide direction on requesting late evidence. As both parties had this evidence in front of them during the hearing, I do not find that considering this evidence will prejudice either party. As such, along with the One Month Notice, the attached summary information written by the Landlord will be considered as part of this decision.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside?

Background and Evidence

Both parties provided affirmed testimony as well as documentary evidence. The tenancy began in 2002 and the current rent is \$1,250.00. Both applicants (the Tenant and his son) are tenants under the same Tenancy Agreement.

During the hearing, both parties agreed on the terms of the One Month Notice which was signed on February 6, 2018 and served personally to the Tenant on the same day, along with a “summary of late payments and noise disturbances” written by the Landlord. The following reasons were listed for ending the tenancy on the One Month Notice:

- Tenant is repeatedly late paying rent.
- 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.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord testified that rent has been paid late approximately twelve times between 2010 and 2018 and there have been occasions where a Ten Day Notice to End Tenancy has been issued due to unpaid rent. The Landlord submitted a summary attached to the One Month Notice that outlined late payments of rent in February 2012, August 2012, September 2012, November 2015, April 2015, June 2015, August 2016, March 2016, May 2017 and February 2018.

The Tenant testified that he has paid rent late over the course of his tenancy. When this has occurred, he has always talked to the Landlord and they have come to an understanding. The Tenant submits that the latest time was in February 2018 when there was an identity theft incident with his bank and he was not able to pay rent until February 5, 2018 due to his bank account being frozen. Both parties agree that the Tenant is current on rent payments and has paid rent for April 2018.

The Landlord testified that the Tenants have caused significant disturbance to other occupants in the building through loud conversations, yelling and inappropriate

behaviour within the rental unit as well as in the common areas of the property. He submits that the other tenants in the building complain to him often and he receives approximately two complaints per month regarding the noise and behaviour of the Tenants. The Landlord submitted three letters from other tenants in the building as evidentiary material. The summary sheet attached to the One Month Notice lists noise complaints on August 12, 2010, March 16, 2015 and February 4, 2018.

The noise complaint on February 4, 2018 occurred on the evening of February 4/early morning of February 5, 2018, when the police came to the rental unit and there was conflict between the Tenants and the police which caused disturbance to the other occupants in the building. Two of the letters submitted as evidence from other tenants in the building speak to the noise and disturbance caused during the police presence at the rental unit on this date.

The Tenant testified that the police came to his home early in the morning on February 5, 2018 due to misinformation they had regarding his son. As such, the Tenant stated that he and his son are not responsible for the noise that resulted. The Tenant was aware of the noise that was occurring at a late hour and asked the police to come into his unit to talk about the situation. However, the police stayed outside and the Tenant agrees that a lot of noise and disturbance was caused by trying to figure out what was going on and when he, his son and his son's friend were taken into custody. The Tenant submitted evidentiary material that outlined the events of this evening and how he was unaware of why the police were questioning him and his son which caused the situation to intensify.

The Landlord also testified regarding the ongoing issue of noise from the Tenant's son stating that he is loud when coming home and that arguments between the two tenants were often heard occurring in the rental unit. The Tenant was in agreement that he and his son used to argue in the home more frequently, but submits that the issue resulting in the arguments has been resolved and as such, the arguments do not occur anymore.

In 2017, the Tenant spoke to the Landlord and came to an agreement that if his son continued to cause disturbance and/or noise issues in the building, that he would have his son move out. The Landlord agreed that he and the Tenant had made this arrangement, but submits that this agreement was not upheld with the disturbance that occurred on February 5, 2018, prior to the issuance of the One Month Notice.

The Landlord testified that he is worried that more disturbances will happen within the building and that he has given the Tenants plenty of time and leeway to sort the issues

out. He believes that the issues of noise and disruption are ongoing and escalating and he says that other tenants do not feel comfortable or safe in the building.

The Landlord has had many complaints of noise regarding the Applicants from other tenants, but said that the other tenants want to remain anonymous and were therefore not willing to have their complaints shared as evidence for the purposes of this Dispute Resolution. The Landlord reported that he has done his best to respond to the complaints and figure out a solution, but he is no longer willing to do so and therefore took action by issuing a One Month Notice on February 6, 2018.

The Tenant is in agreement regarding some noise and other disturbance issues in the past, but states that they have been resolved and are not a current concern. The Tenant agrees that the issue from February 2018 was a disturbance, but was outside of his control as the police entered onto the property and brought the conflict into the common areas of the rental building. The Tenant would like to stay in the rental unit and maintain his verbal agreement with the Landlord that should his son be a disturbance through noise or inappropriate behaviour in the future, that he will have his son move out.

Analysis

Both the Tenant and Landlord confirm delivery and receipt of the One Month Notice on February 6, 2018. In reviewing the One Month Notice, I find that the Notice is in compliance with Section 52 of the *Residential Tenancy Act* (the *Act*). As the Tenant confirmed receipt of the One Month Notice on February 6, 2018 and applied to dispute the Notice on February 15, 2018, I also find that the Tenant applied to dispute the notice within ten days as per Section 47(4) of the *Act*.

In regards to the claim of repeated late payment of rent, I refer to the *Residential Tenancy Branch – Policy Guideline 38 – Repeated Late Payment of Rent* which provides consideration for the time period between late payments, as well as extenuating circumstances, such as an unforeseeable error with the tenant's bank. Due to this, I disregard the late rent payment of February 2018 due to the situation with the Tenant's bank and his testimony of informing the Landlord of the situation. Putting the February late rent payment aside, the evidence shows the last late rent payment in May 2017. I do find that there were a significant number of late rent payments prior to May 2017. However, I find that there is insufficient evidence to establish a pattern of recent repeated late payment of rent or to prove that it remains a current issue.

In regards to the claim that the tenants have significantly interfered, unreasonably disturbed, or seriously jeopardized the health or safety of another occupant or the landlord as per Section 47(1)(d), I have considered the testimony and evidence of the Landlord of ongoing noise and disturbance as well as the incident of February 5, 2018. I find that the Landlord has shown that some of the other occupants in the building have been disturbed by noise from the Tenants and it seems there has likely been some behaviour that has been disruptive to other occupants of the building. However, I do not find there is sufficient evidence to show that the noise level and behaviour of the Tenants has “significantly” or “seriously” interfered with the other tenants in the building. I do, however, caution the Applicants to be aware of their noise level and behaviour, both in their rental unit and in the common property of the rental building and to show respect for the rights of the other tenants to have quiet enjoyment of the property.

As for the incident on February 5, 2018, I find that the police’s presence at the rental unit could have neither been predicted nor controlled. Although the disturbance caused by this incident was likely very loud and disruptive to the other occupants, it is difficult to fault the Tenants for this incident without sufficient evidence to show that the police were attending the rental unit due to a situation in the control of the Tenants.

As for the Landlord’s claim of a breach of a material term of the tenancy, I refer to the *Residential Tenancy Branch – Policy Guideline 8 – Unconscionable and Material Terms* as well as Section 47(1)(h) of the *Act*, which state that to end a tenancy due to the breach of a material term, the party alleging a breach must inform the other party of the breach in writing and include a deadline to fix the issue within a specified timeline. I find there is insufficient evidence to demonstrate that a material term of the tenancy was breached and that the proper process for a breach of a material term in accordance with the *Act* was followed.

Rule 6.6 of the Rules of Procedure provides that with a tenant’s application to cancel a notice to end tenancy, the onus of proof is on the landlord to prove the reason that the notice to end the tenancy was issued. On a balance of probabilities, I have determined that there is insufficient evidence to accept the claims as outlined on the One Month Notice.

Due to the above, the Tenant’s application to cancel the One Month Notice for Cause is successful. The One Month Notice is cancelled and of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The One Month Notice to End Tenancy dated February 6, 2018 is **cancelled and is of no force or effect**. The tenancy will continue until ended in accordance with the *Act*.

Both Tenants are cautioned to be aware of their noise level and behaviour, both in their rental unit and in the common property of the rental building, and to show respect for the rights of the other tenants to have quiet enjoyment of the property.

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: April 27, 2018

Residential Tenancy Branch