



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and

The landlord's agents MF and MY ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties 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.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the *Act*.

The landlord gave undisputed sworn testimony that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice), with an effective date of March 1, 2018 was served to the tenant on January 22, 2018 by posting it on the tenant's door. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in February 2017 with monthly rent currently set at \$320.00, which is payable on the first day of each month. A copy of the written tenancy agreement was submitted in evidence.

The landlord submitted the notice to end tenancy providing seven grounds:

1. Tenant has allowed an unreasonable number of occupants in the unit/site;
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
4. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
5. The tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
6. The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; and
7. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord's agents testified that that the landlord had obtained an Order of Possession in November 2017 for tenants residing in a different unit in the same building. The tenants vacated the unit in January of 2018 after the landlord attended Supreme Court and utilized the services of bailiffs to remove the tenants from the unit and property. The landlord's agents testified that the tenant in this application had allowed these tenants to return to the building and reside in her unit with her.

The landlord's agents testified that the tenant's unit was a bachelor unit, and meant for single occupancy only. The two tenants who moved in with her were her brother and his girlfriend. The landlord discovered this after reports from neighbours and through video footage.

The landlord's agents testified that several letters have been sent to the tenant regarding noise, complaints from neighbours, illegal activity, as well as unauthorized subletting of her suite. The landlord sent a warning letter dated January 22, 2018 warning the tenant of a possible eviction. The landlord also provided in evidence correspondence with the police discussing possible illegal activity.

The landlord believes the tenant's brother still resides with her, although the landlord's agents confirmed in the hearing that they could not view the security cameras to confirm when and how long the tenant had allowed her brother and his girlfriend to reside in the unit.

The landlord's agents also testified that the police had investigated a possible "bike chop" at the building by the tenant, but was unable to confirm whether the tenant had been charged.

The tenant admitted that she had allowed her brother and his girlfriend to stay with her as guests for only two weeks as it was cold outside. She disputed that she and her guests had caused any disturbance, and she testified that her brother and his girlfriend have moved out. She testified that her brother still visits her at her unit. The tenant also disputes the fact that she had participated in any illegal activity, and that she was able to produce a receipt for her bike, and that her brother's bike was also returned to her. The tenant testified that she did have a guest who had a dog that barks.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The landlord served the tenant with the 1 Month Notice on January 22, 2018 by posting the notice on the tenant's door. In accordance with section 90 of the *Act*, the tenant is deemed served with the notice on January 25, 2018, three days after posting. The tenant filed for dispute resolution on February 2, 2018. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

Section 47 of the *Act*, in part, states as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

The landlord testified that they wished to end this tenancy on the grounds that the tenant had sublet the rental unit without first obtaining the landlord's written consent. Although the term "sublet" is used by the landlord in this dispute, I must note that RTB Policy Guideline #19 clearly provides the definition of a "sublet" versus a "roommate" or "occupant" situation, which states:

"Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate..."

By the above definition the tenant's brother or his girlfriend cannot be considered a "sublet", but an occupant or a guest, as the tenant still resides there. As such I find that the tenant had not sublet her unit, and therefore the landlord's application for an Order of Possession on the grounds that the tenant had sublet her unit without the landlord's permission is dismissed without leave to reapply.

The landlord also indicated that an unreasonable number of occupants were in the rental unit. Although it was undisputed that the tenant's unit is a bachelor unit, the landlord was unable to confirm whether the tenant's brother and his girlfriend were still residing with the tenant, and for what specific duration of time. The tenant disputes that either party is still residing with her, and that her brother still visits her on occasion. As there is conflicting testimony as to whether the tenant's brother or his girlfriend still resides with her, and the length of time they had occupied the unit, and as the landlord was unable to provide sufficient evidence to support specific details about the occupancy, I find that the landlord has not justified ending this tenancy on the grounds that the tenant had sublet her unit.

The landlord also expressed concern that the tenant or her guests were participating in illegal activity. The landlord was unable to confirm whether the tenant or her guests have been charged with this illegal activity, and the tenant disputes this claim. As the landlord was unable to provide sufficient evidence to support whether the tenant or her guests have participated in illegal activity, I find that the landlord has failed to justify ending the tenancy on the grounds of illegal activity by the tenant or person permitted on the property by the tenant.

The landlord also indicated on the notice that the tenant has caused extraordinary damage to a rental unit or residential property. Although the landlord referenced damage by the tenant's brother and his girlfriend before they were removed by the bailiffs, I find that the landlord did not provide sufficient evidence supporting what damage was caused by the tenant or what damage was caused by any persons permitted on the property by the tenant. I am not satisfied that the testimony and evidence submitted by the landlord for this hearing sufficiently supports that the tenant or anyone she had permitted on the property had caused damage to the rental unit or residential property to the extent that justifies the end of this tenancy on these grounds.

Although the landlord referenced the above concerns, as well as unauthorized alterations to the fixtures in the tenant's unit, I find that the landlord did not provide sufficient evidence to support how the tenant's actions have put the landlord's property at risk. Although the landlord supported how the tenant's evicted brother and his girlfriend had caused previous damage to their unit and the building, I find that the landlord was unable to provide specific details about when and how long the tenant had allowed her brother and girlfriend to occupy her unit, and how this had put the landlord's property at risk. As noted above the landlord and other occupants expressed concerns about illegal activity, the landlord was unable to confirm what specific charges have been laid. I find that the landlord has not provided sufficient evidence to support ending this tenancy on the grounds that the tenant or persons permitted on the property by the tenant had put the landlord's property at significant risk.

The landlord also testified that they had received several noise complaints about suspicious foot traffic, which has caused a disturbance to the tenant's neighbours. The landlord also testified that the tenant had allowed a dog to bark loudly in her unit. Although I find that the tenant or her guests may have caused a disturbance to her neighbours, I find that the landlord's evidence does not support how this behaviour has seriously jeopardized the health or safety of the landlord or her neighbours, nor am I satisfied that this behaviour is of a serious enough nature to justify the end of the tenancy. On this basis, I find that the landlord has not justified ending this tenancy on the grounds that the tenant or a person permitted by her on the property have seriously jeopardized the health or safety of the landlord or other occupants, or on the grounds that the tenant or a person permitted by her on the property have significantly interfered with or unreasonably disturbed the landlord or other occupants.

I find that the landlord has failed to demonstrate to the extent required that the tenant has contravened section 47 of the *Act*, and accordingly I am granting the tenant's application for

cancellation of the 1 Month Notice. The tenancy will continue as per the current tenancy agreement and the *Act*.

As the tenant had not provided sufficient evidence to support how the landlord has failed to comply with the *Act* or tenancy agreement, the tenant's application for the landlord to comply with the *Act* or tenancy agreement is dismissed.

Conclusion

The landlord's 1 Month Notice to End the Tenancy is cancelled and of no continuing force, with the effect that this tenancy continues until ended in accordance with the *Act*.

The tenant's application for an order for the landlord to comply with the *Act* and tenancy agreement is dismissed.

This Decision is final and binding on both parties.

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: May 4, 2018

Residential Tenancy Branch