



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 20, 2018.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on January 1, 2015. Rent in the amount of \$720.00 was payable on the first of each month. The tenant paid a security deposit of \$347.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on March 31, 2018.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right or another occupant or the landlord;
- Tenant or a person permitted on the property by 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.

The landlord testified that the tenant has been leaving the door to the property open, by putting a rock or some other items between the door and the frame and putting the building at risk. The landlord stated that the tenant has been warned about leaving the door open.

The landlord testified that one of the other occupants of the building had removed a bottle from the door and the tenant's guest was upset and ran over to the occupant and punched them in the face. The landlord stated the police attended and they provided the police with a copy of the video. Filed in evidence is a video.

The tenant testified that they are not leaving the door open. The tenant stated that the person that assaulted the occupants was not their guest on the day of the incident. The tenant stated this person was introduced to them by another occupant of the building. The tenant stated that this person was over visiting them and the other occupant the night before the incident and left with some other friends; however, they left their car behind as it would not start. The tenant stated that they did not invite this person on to the property on the day in question and had no idea they were there. The tenant stated that because of this incident they are not associating with them anymore.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right or another occupant or the landlord;
- Tenant or a person permitted on the property by 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

I accept the evidence that an occupant of the building was assaulted. I find any act of violence is serious and unacceptable.

However, I am not satisfied that this person was a guest of the tenant at the time the assault occurred, as the evidence of the tenant was that this person left the night before and they did not know that they had returned at that particular time. This person also visits other occupants of the building.

Further, I am not satisfied that the landlord has met the burden of proof that the tenant has been leaving the door open. There are no cameras on the door and the tenant has denied leaving the door open.

I find the landlord has failed to provide sufficient evidence to support the reasons stated. Therefore, I grant the tenant's application to cancel the Notice. The tenancy will continue in accordance with the Act.

However, I find it appropriate to make the following orders.

As I am satisfied an assault occurred by a person that the tenant knows and has been a guest on the property. **I find it appropriate to order that the tenant is not to allow this person on the property at any time as their guest.**

Further, **I order the tenant that they are not to use any items to leave the door open.**

Should the tenant fail to comply with these orders, the landlord is at liberty to issue a One Month Notice to End Tenancy for Cause, for failing to comply with the order. A copy of this decision can be presented as evidence at any future hearing.

Conclusion

The tenant's application to cancel the Notice, issued is granted.

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 23, 2018

Residential Tenancy Branch