



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA DEVELOPMENT SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the *Act*) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

Two agents for the Landlord were present (the “Landlord”) for the duration of the hearing and a witness for the Landlord joined later in the hearing to provide testimony. The two Tenants were present for the duration of the hearing, along with an advocate and two support workers (the “Tenants”). All parties were affirmed to be truthful in their testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding documents by registered mail. The Tenants confirmed receipt of a copy of the Landlord’s evidence. As the Tenants only submitted the One Month Notice in evidence prior to the hearing, they did not share their evidence with the Landlord.

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 to be Decided

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

Background and Evidence

Both parties agreed as to the terms of the tenancy. The tenancy began on April 15, 2018 and rent in the amount of \$570.00 is due on the first day of the month. A security deposit in the amount of \$621.00 was paid at the outset of the tenancy.

The One Month Notice was posted on the Tenant's door on May 1, 2018. The Tenants confirmed receipt of the One Month Notice on May 1 or May 2, 2018. The Tenants applied to dispute the notice on May 4, 2018.

The reasons listed on the One Month Notice are as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed 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:
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
 - Jeopardize a lawful right or interest of another occupant or the landlord

The One Month Notice provides further details of the reason for the notice and notes that three material clauses of the Tenancy Agreement were breached. A letter was also provided to the Tenants at the same time as the One Month Notice. The letter, dated May 1, 2018 was submitted by the Landlord as documentary evidence and further outlines the three material terms of the Tenancy Agreement that were breached. The Tenancy Agreement was also submitted in documentary evidence. The three terms that were breached are listed on the Tenancy Agreement as 'Conduct', 'Crime-Free Housing', and 'Common Areas'.

The Landlord testified that on April 23, 2018, they suspected that the male tenant was under the influence of alcohol and/or drugs on the rental property. Later that evening, they found the male tenant in the loading bay of the rental building and stated that he had let others into the loading bay as well. The Landlord testified that evidence of drug use was found in the loading bay after the male tenant and the other people had left.

The Landlord submitted photos taken from security camera footage of the loading bay on the evening of April 23, 2018. The photos show the male tenant as well as two other people in the loading bay. The Landlord testified that later in the evening, the male tenant was either asleep or passed out in the loading bay and that a staff member let him back into the building after asking the other people to leave. A photo from later in the evening shows the staff member closing the door after the male tenant and other people had left.

The Landlord testified that on the same evening of April 23, 2018, the male tenant had held the elevator door open for too long and that as a result, the elevator needed to be reset.

The Landlord testified that on April 30, 2018 the male tenant told them that the female tenant had been reported as missing. He also advised the Landlord that there were needles inside the rental unit and that the rental unit was not clean.

The Landlord stated that they have presented options for alternate housing to the Tenants through their support workers, but that the options were not taken.

A witness for the Landlord presented affirmed testimony during the hearing. The witness, another tenant in the same building, testified that early in the evening on April 23, 2018 she had seen the male tenant standing near the elevator and that he was swearing. She testified that she believed he was under the influence of alcohol and/or drugs based on his appearance and demeanor.

Later in the evening of April 23, 2018, the witness testified that she went downstairs to take her garbage out when she heard a staff member asking people to leave. She went to see if the staff member needed help and saw the male tenant in the loading bay. The witness testified that the staff member called 911, but cancelled the call when the tenant identified himself as a resident of the building. The staff member let the male tenant back into the building.

After the male tenant left the loading bay area, the witness testified that she noticed small squares of tin foil on the ground. She advised the staff member not to touch the tin foil as she believed they were used for illegal drug use.

The witness submitted that she is worried for her safety in the building due to the behaviour and actions of the male tenant and the fact that other people were let into the building to engage in illegal activities.

The Tenants testified that the incidents on April 23, 2018 involved only the male tenant and not the female tenant. The male tenant testified that he was under the influence of alcohol and that as he does not usually drink alcohol, his actions were out of character. Due to consuming alcohol, he does not recall letting anyone into the loading bay and he was unsure if he was responsible for opening the door that leads outside from the loading bay, or if it was already open when he arrived.

The male tenant testified that he was in the loading bay for approximately one hour and 40 minutes as noted by the times on the photos submitted by the Landlord. He stated that he does not know the people who were in the photos of the loading bay with him.

He testified that he believes he was taking garbage out at the time and ended up in the loading bay. While there, he stated that he eventually passed out. He testified that he did not use drugs in the loading bay, and is not sure if the other people did as he does not remember or was passed out at the time. He was let back into the building later by the staff member who found him in the loading bay.

The male tenant testified that he did not intentionally tamper with the elevator, but instead that when he entered the elevator his sandal got stuck, thus holding the elevator door open. He went back to his apartment without his sandal and it was returned to him later.

The male tenant testified that he notified the Landlord about needles in their rental unit on April 30, 2018 as he believed a staff member needed to enter their unit and he wanted to be responsible by notifying the Landlord of a possible safety concern.

The Tenants submitted that they did not receive warning regarding the possible ending of their tenancy and instead only found out about it when they received the One Month Notice, along with the letter dated May 1, 2018 which further explained the reasons for the One Month Notice.

Analysis

During the hearing, both parties agreed that the male tenant entered the loading bay on April 23, 2018, and that it was an area where he should not have been.

Despite the Tenant not remembering whether he opened the door to the loading bay or let other people in, based on the evidence and testimony of both parties, I find it probable that he was responsible for opening the door and allowing others to enter.

The One Month Notice dated May 1, 2018 and the warning letter dated May 1, 2018, note the breach of three material terms of the Tenancy Agreement. However, 'breach of a material term' was not checked off as a reason on the One Month Notice.

The process for alleging a breach of a material term, in accordance with the *Residential Tenancy Policy Guideline 8 – Unconscionable and Material Terms*, includes sending a letter of warning to the tenants that outlines the alleged breach and provides a reasonable deadline for resolving the problem. If the issue is not corrected by the deadline outlined in the warning letter, the tenancy may be ended.

Based on the testimony and evidence of both parties, I find it likely that the male tenant breached at least one term of the Tenancy Agreement. However, I find that there is insufficient evidence to establish that a warning letter was given to the Tenants outlining the concerns and providing a reasonable timeline to correct them. While a letter was provided, it was given at the same time as the One Month Notice. Therefore, I find that the Tenants were not provided with a reasonable opportunity to correct a breach of a material term of the Tenancy Agreement in accordance with the *Act*.

The One Month Notice dated May 1, 2018, was provided to the Tenants based on Sections 47(1)(d) and 47(1)(e) of the *Act*:

(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

- (i) has caused or is likely to cause damage to the landlord's property,
- (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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

I find that the actions of the male tenant put the Landlord's property at risk, both in the loading bay and regarding the elevator. However, based on the testimony and evidence of both parties, I find there is insufficient evidence to determine that the risk to the property was either significant or an ongoing concern that may lead to a significant issue.

I also find that there is insufficient evidence to show that other occupants or the landlord were significantly interfered with or that the safety of the other occupants or the landlord was seriously jeopardized. However, I do acknowledge that the actions of the male tenant caused concern for the safety of the building, the Landlord and the other occupants in the rental property.

Based on the conflicting testimony of the parties regarding illegal drug use, I find that there is insufficient evidence to prove that illegal activity occurred on the premises. Further to this, I look to *Residential Tenancy Policy Guideline 32 – Illegal Activities*, which states the following:

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The Landlord testified that there was evidence of illegal drug use found in the loading bay and that the Tenants advised the Landlord as to the presence of needles in the rental unit. Despite potential illegal drug use, I find insufficient evidence to establish that this was sufficiently serious in terms of interfering with the Landlord or the other occupants in the building, pursuant to *Policy Guideline 32*.

As per the analysis outlined above, I find that the reasons for the One Month Notice are not sufficient in this instance to end the tenancy. Therefore, the One Month Notice dated May 1, 2018 is cancelled and is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I also caution the Tenants that they should consider this decision a warning that they must follow the terms of behaviour outlined in the *Residential Tenancy Act*, as well as their Tenancy Agreement. Should further inappropriate behaviour or actions occur, the Landlord may find that the Tenants have been adequately warned and may take steps to end the tenancy in accordance with the *Act*.

Conclusion

The Tenants' application is successful. The One Month Notice dated May 1, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: June 11, 2018

Residential Tenancy Branch