



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

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 and to recover the filing fee from the landlord for the cost of the application.

The hearing was adjourned from May 17, 2018 and my Interim Decision was provided to the parties which ordered that any evidence that either party wished to rely on must be provided to the Residential Tenancy Branch and to the other party by no later than the end of business on June 5, 2018.

The landlord and an agent for the landlord and an agent for the tenant attended the hearing on both scheduled dates. The landlord and the tenant's agent each gave affirmed testimony, and the parties were given the opportunity to question each other and give submissions.

During the course of the hearing, the parties agreed that the automated system of the Residential Tenancy Branch has marked some of the evidentiary material as being provided by the tenant, when it was actually provided by the landlord. The parties agree that all evidence has been exchanged, and no further issues with respect to service or delivery of documents or evidence were raised. All evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed-term tenancy began on March 5, 2018 and expires on February 28, 2019. Rent in the amount of \$3,500.00 per month is 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 tenants in the amount of \$1,750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 1 bedroom suite in a condominium complex, and a copy of the tenancy agreement has been provided as evidence for this hearing, which names 2 tenants.

The landlord further testified that on March 23, 2018 the landlord served the tenants 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 for this hearing and it is dated March 23, 2018 and contains an effective date of vacancy of April 30, 2018. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- 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;
- 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 received a letter from the strata management about complaints of smoking marihuana and pets. A copy has been provided for this hearing. The landlord testified that it's a non-smoking building and an Addendum to the tenancy agreement specifies that. The strata management has imposed a \$200.00 fine for smoking, which the landlord passed over to the tenants asking them to pay it, but the tenants disputed it. The landlord received a letter from the strata council saying that the dispute was dismissed, the by-law stands and the fine remains outstanding. The letter is dated May 25, 2018, however a copy has not been provided as evidence for this hearing.

The landlord further testified that the main reason for issuing the Notice is due to the tenants providing false information on the tenancy agreement about who would be living in the rental unit. It is a 1 bedroom unit, and the tenant is rarely there. When the tenancy agreement was signed, the tenants named on it are a tenant and her father, who pays the rent. The landlord was told that only the tenant would be living there, and that the tenant's father and sister would visit on weekends sometimes. However, the landlord found out that the tenant's brother is living there who is presently on a curfew by law. In May the landlord found a letter from strata management saying that a person not noted on the Form K as required by the strata is residing in the rental unit. The Concierge told the landlord that the tenant's brother is residing there, and that the Concierge rarely sees the tenant.

The tenant's agent testified that she is the sister of the tenant and was present when the tenancy agreement was signed, and offered to have her name added to it. The tenant's

father is a tenant named in the tenancy agreement, and the tenant still resides in the rental unit, and her father pays the rent but does not reside there.

The tenant and her brother are full-time students in the community. The brother stays in the rental unit sometimes 4 times per week, but not always. The tenant is at the library often until 10:00 at night. Neither of them smoke or party; they don't have time. The apartment is a 1 bedroom plus a full size den unit with no windows. There is a bed in the den and sometimes someone sleeps in the den; the tenant's sister or brother or father and there's nothing illegal about that. The mattress was up against the wall when the landlord inspected. That's why the tenant's father got the rental unit and is paying \$3,500.00 per month to stay there. It is not rented on Air BNB or used for any other purpose.

With respect to the strata complaint about pets, the tenant walks dogs for other tenants in the complex, but has no pets.

With respect to the strata complaint about smoking, the Concierge was invited into the rental unit when he asked about a strong smell. It was a candle with a rusty musk smell from Bath and Bodyworks. The tenant disputed the fine and has not heard any result, despite the landlord's testimony that a May 25, 2018 letter states that the fine remains in place. The tenant has not received the letter, and the tenant's agent will follow-up. The tenant saved the candle and the Concierge took a photograph of it. There is no patio, and there is no place to smoke. The landlord has also been invited in any time he wants.

The Concierge has asked the tenant why she only leaves the apartment 4 times per week, and told the tenant that the landlord told him to keep track of when the tenant comes and goes. He and the landlord are monitoring her every move. The tenants are not doing anything wrong.

Shortly after the tenancy began the landlord told the tenant's agent that he received an email from an International student who was willing to pay about \$500.00 per month more than the tenants are currently paying for rent. If he hadn't received that information, none of this would be a problem.

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 reasons for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The landlord testified that the risk posed by the tenant is a fire risk from smoking. I do not accept that, nor am I satisfied that the tenants or a person permitted on the property by the tenants has smoked in the rental unit. The strata fine and allegation are still in dispute, although the landlord testified that he received a letter from the strata council indicating that the fine remains. However I am not satisfied that the landlord has established that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

Given that the allegation of smoking marihuana has not yet been determined as true, I am not satisfied that the landlord has established illegal activity for that. The landlord also testified that the tenant's brother is on a curfew, but made no comments or allegations with respect to any illegal activity by the brother in the rental unit or on the rental property. I have read the emails provided by the parties and note that the landlord suggests on several occasions of gang related activity, but I find that is merely an opinion, not a fact. The fact is, the landlord made no allegations of illegal activity in the rental unit or the rental property at all by the tenants or the tenant's brother.

With respect to the landlord's allegation of breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, I have reviewed all of the evidentiary material, particularly the strata council letters and emails. The strata council letters indicate that another person, who is not listed on the Form K, is residing in the rental unit, however there is no indication of what constitutes residing in the rental unit or any restrictions respecting over-night guests.

One of the emails from the tenants' agent to the landlord states that prior to the start of the tenancy, the tenants were not aware that the building manager wanted the tenants to report every visitor, or that he would be contacting the landlord each time, or that having overnight guests would breach the tenancy agreement, or that having family stay over was going to be an issue. The tenants were not asked to write down their names, but only asked about whom the primary tenant was and who would be paying the rent. It also states that no one, but the tenant's immediate family stays or visits the unit. The landlord's position stated in the text messages is that the tenants are the only people allowed to live in the rental unit, and that the landlord was advised that only one of the tenants would actually reside there, and her father and sister might visit on weekends, and that without disclosure of another family member residing there, it breaches the contract.

In the circumstances, I am not satisfied that the landlord has established that any persons other than the tenants named in the tenancy agreement reside in the rental unit. There is no law or limitation with respect to visitors. The tenants' agent testified that a mattress was up against a wall when the landlord inspected, and the landlord did not dispute that.

Residing in the rental unit would surely require the brother to have his belongings in the room, and there's no evidence about that at all. The tenancy agreement does not indicate how many nights a guest may stay in the rental unit per month or week or any other limitations. I agree with the tenants' agent that the tenants have not done anything wrong, and I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenants are permitted to reduce rent for a future month by that amount, or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for cause dated March 23, 2018 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: June 13, 2018

Residential Tenancy Branch