



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing pursuant to the Residential Tenancy Act (the “Act”) was reconvened from an earlier adjourned hearing of September 7, 2018 and dealt with the tenant’s application for:

- Cancellation of a one month notice to end tenancy for cause (the “1 Month Notice”) pursuant to section 47; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant’s advocate and the landlord’s agents were also in attendance.

Service of documents was confirmed in the earlier hearing of September 7, 2018 where both parties confirmed receipt of each other’s evidence. The evidentiary materials were available online for me to review.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for their application?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in January, 2017. The current monthly rent is \$745.00 payable by the end of the previous month. The rental unit is in a multi-unit building with 106 suites. Entrance to the building is controlled by a dial-in system where guests must be permitted entrance by a resident.

The landlord issued the 1 Month Notice on July 12, 2018. The notice states the reasons for the tenancy ending as:

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:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.*

The landlord testified that the tenant has allowed, on more than one occasion, a former resident of the building access. The landlord said that the former resident's tenancy was terminated for cause. The landlord submitted into evidence written memorandums showing that the tenant was verbally advised that the former resident is no longer welcome on the property on June 5, 2018 and issued a warning letter on June 11, 2018 prior to the 1 Month Notice being issued. The maintenance manager MF testified that on July 12, 2018, the date of the 1 Month Notice, he encountered the former resident who informed him that the tenant has her personal belongings and is demanding she visit the rental building to spend time with the tenant.

The landlord submits that the tenant's disturbance of other occupants and the staff constitutes illegal activities giving rise to the 1 Month Notice. The landlord said that the tenant has himself bothered other occupants of the rental building and there have been a number of complaints made regarding his behaviour. The landlord's assistant AD testified that the reason that there are very few incident reports regarding the tenant's behaviour is because other residents fear retaliation and would not consent to make complaints.

The landlord testified that even after the 1 Month Notice was issued the tenant allowed the former resident access to the building on a number of occasions recorded on camera. The landlord further submits that the tenant has verbally berated the landlord and his staff as well as making verbal threats against their safety.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or that they have engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or well-being of other occupants.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. While it is clear from the evidence submitted that the tenant's conduct has not been beyond reproach, I find that there is insufficient evidence to show that there is cause for ending this tenancy on the basis of the 1 Month Notice.

The landlord submits that disturbing other occupants and making verbal threats is an inherently illegal activity. I do not find the landlord's submission to be persuasive. While disturbing others may be an annoyance, inconvenient and a nuisance it is not inherently illegal. Furthermore, while verbal threats against a person's safety may constitute an illegal act, the evidence submitted by the landlord is that the altercation occurred in August 20, 2018, over a month after the issuance of the 1 Month Notice. I find that the incident referenced in the testimony and documentary evidence could not have led to the issuance of the 1 Month Notice as it occurs several weeks after the landlord issued the Notice.

The landlord's testimony and written evidence indicates that the primary incident which led to the issuance of the 1 Month Notice occurred in July, 2018 when the tenant allowed a former resident access to the building. The evidence is that the tenant was initially advised to control the former resident, indicating that her presence was allowed, before being informed that she was not permitted on the property. The written evidence shows that a verbal warning was issued on July 5, 2018. While the memorandum of the

maintenance manager RB indicates that a letter to the tenant was issued on July 7, 2018, that letter was not submitted into evidence. The landlord next issued a letter on July 11, 2018 and then issued the 1 Month Notice on July 12, 2018. I find that there is insufficient evidence that either the tenant or the former resident significantly disturbed or unreasonably interfered with others at that time.

I do not find the landlord's evidence that there are multiple complainants who wish to remain anonymous to be credible or persuasive. Based on the documentary evidence submitted I find that while there are some mention of the tenant's conduct during the tenancy, it does not meet the threshold of showing that the tenant has unreasonably disturbed another occupant such that it warrants an end of a tenancy.

I do not find that the landlord has provided sufficient evidence to meet the burden of proof that the tenant's actions have given rise to cause to end this tenancy at this time. Consequently, I dismiss the landlord's 1 Month Notice.

As the tenant's application was successful the tenant is entitled to recover their filing fee from the landlord. As this tenancy is continuing I allow the tenant a one-time reduction of their next monthly rent payment by \$100.00 in full satisfaction of this monetary award.

Conclusion

The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is permitted to make a one-time reduction of their next monthly rent payment by \$100.00 from \$745.00 to \$645.00.

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: October 1, 2018

Residential Tenancy Branch