



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for the stated reasons on the notice?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed facts: the tenancy started in September 2017. Rent of \$850.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. On July 31, 2018 the Landlord gave the Tenant a one month notice to end tenancy for cause dated July 31, 2018 (the “Notice”). Neither Party provided a copy of the Notice as evidence. The reasons stated on the Notice are that:

- the tenant or a person permitted on the residential property by the tenant has
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- b. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - c. put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - a. 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
 - b. has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The Landlord confirms that no evidence to support the Notice has been provided to either the Tenant or the Residential Tenancy Branch in advance of this hearing. The Landlord states that all the documentary evidence to be relied upon by the Landlord has been provided by the Tenant.

The Landlord states that the Tenant's ex-boyfriend and current boyfriend have been selling drugs from the Tenant's unit. The Landlord states that it is unknown whether the Tenant has allowed or has knowledge of this activity. The Landlord states that he has seen nothing. The Landlord states that he knows nothing about the Tenant's activities and has only been told things from the strata manager and the caretaker. The Landlord states that he has been told that the evidence from the strata of criminal activity is confidential. The Tenant vigorously denies any drug selling from her unit.

The Landlord states that the Tenant is in breach of a material term but cannot state what that term is. The Landlord state that he sent a bunch of emails to the Tenant and verbally told the Tenant of the breach. The Landlord states that no formal letter has

been sent to the Tenant in relation to any breach. The Landlord states "to be honest I have not seen anything, I have nothing." The Tenant denies any breach of the tenancy agreement.

The Landlord states that the Tenant is letting two guys into the building. The Landlord states that the one guy has had a restraining order against being in the building as obtained and provided as evidence by the Tenant. The Landlord states that this was obtained in May 2018 and that since that date the caretaker has seen this person every day in the building.

The Landlord states that either this person was given a key or took the key by force or has been allowed into the building by the Tenant until just recently. The Landlord states that the other guy is the new boyfriend who has access to the building but the Landlord does not know how. The Landlord makes unclear statements about a fist fight on August 20, 2018.

The Landlord states that the Tenant and her boyfriend are arguing and making noise that disturbs the tenant in the unit below. The Landlord state that he received complaints from this tenant on April 11, 12, 24 and May 14, 2018. The Landlord states that he does not have any statement or witness letters of the noise. The Landlord states that the problem is that these two guys are disturbing other tenants.

The Tenant states that the first guy was stalking the Tenant and that on the dates on April and May 2018 this person was assaulting the Tenant in the unit. The Tenant states that the noise came from her being assaulted. The Tenant states that no noise has been caused since. The Tenant states that in addition to the restraining order this person was also charged with assault. The Tenant states that since the restraining order the Tenant has not let this person into the building, has not given this person a key to the building or unit and does not believe that this person has any keys for entry.

Analysis

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. The Landlord was not prepared for this hearing. Evidence given by the Landlord was mostly rambling. The Landlord gave no direct evidence and provided nothing to support any of its indirect evidence. The Tenant gave clear and direct evidence. As a result I prefer the Tenant's evidence and find on a balance of probabilities that the Landlord has not substantiated that the reasons stated on the Notice are valid. I therefore cancel the Notice and the tenancy continues.

Conclusion

The Notice is cancelled and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 24, 2018

Residential Tenancy Branch