



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROSA MARTINCICH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC,

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy, for compensations for loss or damage under the Act, regulations and tenancy agreement and for the Landlord to comply with the Act, regulations and tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on November 23, 2018. The Landlord confirmed that she received the Tenant’s hearing package. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to compensation for loss of damage under the Act, regulations or tenancy agreement?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started in May 2016 and the last tenancy agreement was completed as a fixed term tenancy stating on September 1, 2018 and expiring on November 30, 2018. Rent is \$775.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$375.00 on May 1, 2016.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated November 20, 2018 by posting it on the door of the Tenant’s unit on November 20, 2018. The Effective Vacancy Date on the Notice is December 31, 2018. The Landlord said the Tenant is living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has significantly interfered with or unreasonably disturbed other occupants, seriously jeopardizing health or safety of other occupants, putting the landlord property at significant risk. As well the Tenant has engaged in illegal activities that may damage the Landlord's property, adversely affect the quiet enjoyment of other occupants and the Tenant has jeopardized the legal rights of other occupants. Further the Landlord said the Tenant has breached a material term of the tenancy agreement.

The Landlord said there have been several incidents and complaint letters that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). The Landlord said they have submitted a letter from another tenant Mr. R.M. saying the Tenant has let prostitutes and homeless people into the building and the Tenant has allowed them to stay in his unit on many occasions. As well this letter says there are drug users around the building that leave needles on the grounds and they are acquaintances of the Tenant. Mr. R.M.'s letter also indicates that there are people sleeping in balconies and in the door ways of the rental complex. Mr. R.M. requests the Landlord to deal with the situation.
- 2). The Landlord continued to say that the Tenant is allowing people into his unit to stay over night. These are not authorized guests but transient people that the Tenant is allowing into the rental complex on a regular basis. The Landlord submitted a letter from C. indicated the Tenant is associating with drug users and allowing them to stay in his unit
- 3). The Landlord said she believes the Tenant's acquaintances also broke the security light and locks on the exterior door. The Landlord said this has damaged the property and seriously jeopardized the health and safety of other occupants.
- 4). The Landlord also submitted a letter from occupant E.M. indicating that there is marijuana being smoked in the building although E.M. did not identify the users of the marijuana or from which unit the marijuana was coming from. The letter is not signed, as the Landlord said some of the occupants did not want to be identified.
- 5). The Landlord continued to say that she submitted another letter of complaint from dated October 30, 2018 that indicates a number of non resident people were hanging around the building whistling like they were requesting to be let into the building. There was no indication in the letter the Tenant was involved with this situation. The writer said this is upsetting for a senior person to deal with.
- 6) The Landlord continued to say she thought she and the Tenant had agreed to end the tenancy on November 30, 2018 which was the end of the fixed term of

the tenancy but this did not happen. As well the Landlord has issued a Caution Notice dated November 16, 2018 which indicates the Landlord has received 3 complaint letters. The Caution Notice does not indicate what the complaints are and when they occurred. The Landlord said these complaint letters and the Tenant's action resulted in the Landlord issuing a 1 Month Notice to End Tenancy for Cause dated November 20, 2018.

7) The Landlord said the Tenant has broken material terms of the tenancy by smoking in the unit, allowing too many people to stay in his unit and being associated with drug use in and around the rental complex.

The Tenant's Advocate said the Tenant is a 65 year old senior who keeps to himself and is normally in bed by 9:00 pm each night. The Advocate continued to say the Landlord has not submitted any corroborative evidence that links the Tenant to transient people and marijuana or drug use in the rental complex. The Advocate continued to say this area of the city is in the centre of the drug trade so saying the Tenant is responsible for the drug use in the rental complex is not correct.

The Tenant said he does not have prostitutes or transient people staying in his rental unit. The Tenant continued to say his brother stayed for 1 week with him and his niece visits him weekly, but she stays in a hotel not at his unit. The Tenant said he does not have other people staying at his unit.

Further the Tenant said he does not smoke in his unit. The Tenant said he only smokes outside and he is not involved with drugs or transient people.

The Tenant continued to say that he did not break the security lights or the lock on the door and he doesn't know who did.

The Tenant's Advocate said that the Landlord has harassed the Tenant with notices to end the tenancy. First the Landlord issued an illegal eviction notice to the Tenant on September 1, 2018 when the Landlord said she was not renewing his tenancy agreement. Secondly, Landlord sent a notice to the Advocate saying the Tenant's tenancy was not renewing and then finally the Landlord issued a 1 Month Notice to End Tenancy for Cause dated November 20, 2018. As well the Advocate said the Landlord issued a Caution Notice. The Advocate said the Tenant believes the Landlord has been harassing him and the Tenant is requesting the equivalent of one month's rent as compensation for the harassment and mental anguish. The Tenant is requesting \$775.00 as compensation for the Landlord's harassment.

The Parties were offered an opportunity to settle this matter as the Tenant said he wants to move out, but the parties were unable to come to an agreement so the dispute will be decided by the Arbitrator's decision.

The Tenant's Advocate said in closing only family members have stayed in the Tenant's unit, the Tenant is not involved with drugs and the Tenant is not involved with any transient people in the area. Further the Advocate said the Landlord's evidence is hearsay from other tenants and the letters do not name the Tenant directly and the letters refer to some things that have happened outside of the rental complex and therefore are not admissible to the hearing. The Advocate requested the 1 Month Notice to End Tenancy for Cause be cancelled.

The Landlord said in closing they have 4 letters of complaint about the Tenant for having transient people staying in his unit, being involved with drug users and causing damage to the Landlord's property. The Landlord said the term of the tenancy agreement has ended and the Tenant has breached the tenancy agreement so the tenancy should end as soon as possible.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. The Landlord is acting on complaint letters received from other occupants in the rental complex. The Tenant has given affirmed testimony that he does not have transient people staying in his unit and he is not involved with the drug trade. The Tenant's Advocate indicated the Landlord's evidence is hearsay and the letters do not prove that the Tenant has beach the tenancy agreement, engaged in illegal activities or has seriously interfered with or unreasonable disturbed other occupants of the rental complex.

Consequently the parties will abide by the following decision. In Section 47 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered. Further the Landlord must prove their property was put at **significant** risk. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk. As well a Landlord must prove the Tenant has been involved in **illegal** activities that will damage property, adversely affect other occupants and jeopardize lawful rights or other occupants.

I have reviewed the Landlord's evidence and testimony and I find it to be hearsay from third party occupants and the letters do not directly implicate the Tenant to specific incidents but refer to generalities. Further some of the claims are outside the rental complex which is not in the jurisdiction of the Residential Tenancy Branch. In this case it is my finding that the evidence and testimony the Landlord has provided is not sufficient to prove the reasons given for ending the tenancy. The Landlord's evidence has not proven that the incidents have reached the level of **unreasonableness, significance or seriousness** required by section 47 of the Residential Tenancy Act.

I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date November 20, 2018 is cancelled and the tenancy is ordered to continue as set out in the tenancy agreement.

With regard to the Tenant's monetary claim for compensation for harassment, I find the Landlord was justified to notify the Tenant and Advocate that the tenancy was approaching the end of the fixed term and the Landlord did not want to continue the tenancy. As well the Landlord complied with the Act, regulations and tenancy agreement by issuing the One Month Notice to End Tenancy for Cause as the Landlord believed they had reason to do so. A landlord is not harassing a tenant by issuing caution letters or a Notice to End Tenancy if the Landlord feels they have reason to do so. Consequently I dismiss the Tenant's claim for \$775.00 for harassment and or mental anguish.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated November 20, 2018 is cancelled and the tenancy is ordered to continue as set out in the tenancy agreement.

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: December 20, 2018

Residential Tenancy Branch