



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEIGHBOURHOOD HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was primary represented by their advocate.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the 1 Month Notice and landlord's evidence package. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. Based on the testimonies I find that all documents were served on the respective parties in accordance with the *Act*.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed on the following facts. This tenancy began in 2015. The current monthly rent is \$375.00 payable on the first of each month. The rental unit is in a multi-unit building with 84 total suites.

The landlord testified that since 2017 the tenant has engaged in behavior that contravenes the tenancy agreement and places the property and other occupants at significant risk. The landlord testified that the tenant's infractions include setting fires in the suite requiring emergency services to attend, allowing others to gain access to the rental building, using the emergency exits causing alarms to be set off and engaging in the drug trade in their rental suite. The landlord provided multiple pages of documentary evidence showing warning letters, stills from security cameras, and logs of access to the building.

The landlord issued a 1 Month Notice dated December 19, 2018 providing the following reasons for this tenancy to end.

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

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 or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The tenant disputes that there is sufficient cause for this tenancy to end. The tenant explained that there have never been fires set in the rental suite. They acknowledged that there may have been smoke when they are using fire to deal with cockroaches in the room. The tenant disputes that they engage in the sale of drugs from their suite. The tenant testified that there was one incident where they exited through the emergency fire exit to provide medical aid to someone he witnessed having an overdose but disputes that they use the fire exit regularly. The tenant denies that they loan out their FOB or key to allow others access to the rental building.

Analysis

Section 47 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.

Both parties presented cogent, reasonable testimony. The landlord submitted multiple pages of documentary evidence. The tenant acknowledged some instances where they acted in violation of the tenancy agreement but said that those were isolated incidents and their behavior was modified after receiving warnings. The landlord submits that the tenant's breaches have been ongoing and a source of disturbance to other parties and a potential hazard.

I find that taken in its entirety the landlord has not met their evidentiary burden of showing on a balance of probabilities that there has been a breach giving rise to and end of the tenancy. While the landlord has provided ample documentary evidence I find that their prepared ledger of access to the rental building to be insufficient to show that the tenant is the one who has allowed unauthorized access to the building. The keycard records and security photographs do not establish that the tenant has allowed access to the building. While the evidence shows individuals entering the building I find that there is insufficient material showing a causal link between the tenant and the access.

I find that the written submissions of the landlord regarding the suspected sale of drugs, unauthorized use of the emergency exit and fire alarm in the building to be insufficient to determine that there has been a significant and unreasonable disturbance caused by the tenant. The tenant testified that there have been occasions where emergency services were called or they used the emergency exit but these were isolated incidents. I find that the landlord's written submissions and photographs to be insufficient to show on a balance of probabilities that there has been ongoing disturbance caused by the tenant as alleged.

I find that the evidence presented by the landlord to be reasonable and credible. I find that their inferences and conclusions are in line with what a reasonable person would conclude in similar circumstances. However, I find the submissions of the tenant to be

equally credible. I find the tenant's explanation that they used the emergency exit on a single occasion to assist someone having an overdose to have the air of believability. I find the tenant's explanation of why emergency services were called to be credible.

Under the circumstances I find that the evidence given by both parties to be equally credible. I find that the landlord has not provided sufficient documentary evidence that shows that their interpretation of events is the more likely scenario. While the conclusions reached by the landlord are reasonable, I find that there is insufficient documentary evidence to link the tenant to the contraventions.

Where both parties have provided equally likely scenarios I am unable to find that the landlord has met their evidentiary burden. I find that the landlord has not met their evidentiary burden of showing on a balance of probabilities, that it is more likely than not, that the tenant has engaged in activities that give rise to an end of this tenancy.

Therefore, I find there is insufficient evidence to support the landlord's 1 Month Notice to be upheld.

Conclusion

The tenant's application is allowed and the 1 Month Notice is cancelled and of no further 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: February 5, 2019

Residential Tenancy Branch