



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes ET, CNC

Introduction

This application dealt with applications from both the landlord and the tenant pursuant to the Residential Tenancy Act (“Act”).

The **landlord** sought an order for an early end to tenancy pursuant to section 56; and

The **tenant** sought an order to cancel the landlord’s One Month Notice to End a Tenancy for Cause (“Notice”) pursuant to section 47.

As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of the landlord’s Notice dated December 31, 2018, the application for dispute resolution and evidence. The landlord confirmed receipt of the tenant’s application for dispute resolution. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

Preliminary Matter

The landlord submitted a copy of the Notice, served upon the tenant, which shows an effective date of January 31, 2019. The tenant filed to dispute the Notice on January 8, 2019 while the landlord filed for the early end to tenancy on January 14, 2019.

Section 56(2)(b) states the director may make an order ending a tenancy early if satisfied that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

The parties agreed that since the effective date of the landlord's Notice had already passed, hearing the merits of the tenant's application to cancel the Notice would be appropriate. By agreement of the parties and in accordance with Rule 7.7 of the Residential Tenancy Branch Rules of Procedure, I dismissed the landlord's application for an early end to tenancy and heard the tenant's application to dismiss the Notice.

Issue(s) to be Decided

Should the landlord's Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The rental unit is located in a non-profit housing facility that houses over 100 seniors over the age of 55 and persons with disabilities under the age of 55. This tenancy began on March 1, 2013 when the tenancy agreement was signed and a security deposit in the amount of \$160.00 was collected. Rent is currently set at \$383.00 per month. A copy of the tenancy agreement was entered into evidence by the landlord.

The landlord testified that on October 2, 2018 at 2:00 A.M, the tenant's daughter was caught on security camera leaving the tenant's rental unit, then returning at 3:00 A.M. using a building key provided by the tenant. She is then seen pulling the building's fire alarm causing the building's tenants to evacuate. The tenant's daughter re-entered the unit and stayed there until staff later arrived and called the police. The landlord and police were told by the daughter that she was hearing voices, leading her to feel unsafe which led her to pull the alarm.

The landlord gave undisputed testimony that the daughter has a criminal history of committing assaults and robberies and that she has been banned from shelters due to her behaviour. The daughter's boyfriend also has a criminal history. The other tenants are scared of both the daughter and her boyfriend.

By letter dated October 5, 2018, the landlord advised the tenant that her daughter has been banned from the building as the tenants are feeling threatened and unsafe. A copy of the letter was provided as evidence which references previous letters sent to the tenant regarding the daughter living in her unit. The letter goes on to state that *"if the daughter is caught on the property again we will be forced to issue you with an eviction notice to end your tenancy."*

The landlord advised the tenant again on October 9, 2018 that the tenant was violating the tenancy agreement by permitting a person on the residential property to engage in illegal activity that adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. The landlord testified that section 437 of the Criminal Code says it is an offence to cause a false fire alarm. The letter refers to camera evidence of the daughter entering

the building on October 6, 7, 8 and 9, 2018 and that the tenant is letting the daughter into the building.

The landlord testified that entry to the building is gained by using the intercom at the front of the building. The tenant lets her daughter into the building by “buzzing” her in. The daughter was caught on security camera on December 11th entering the building, entering the craft room then going into the tenant’s unit. A member of the landlord’s staff removed the daughter the next morning. She further testified that the tenants keep personal items in the craft room, some of them valuable, as mobility is an issue for some of the tenants.

On December 18, 2018, the daughter was videotaped entering the building and going into the tenant’s unit. She was removed by police the following morning. The landlord testified that the tenant was personally served with the landlord’s 1 Month Notice to End Tenancy for Cause (“**Notice**”), dated December 31, 2018 on the same date which the tenant confirms. The Notice indicates an effective move-out date of January 31, 2019. Together with the Notice, the landlord provided the tenant with a short summary of the number of times the daughter was caught in the building after being banned and the reasons for banning her. The summary indicates the daughter was videotaped entering the building on December 15, 16, 18, 29, 30 and 31st.

The grounds to end the tenancy cited in that Notice were:

The tenant or a person permitted on the property by the tenant has

1. significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. jeopardized the health or safety or lawful right of another occupant or the landlord;
3. put the landlord’s property at significant risk;
4. engaged in illegal activity that has, or is likely to damage the landlord’s property;
5. engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
6. engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The tenant testified that she does not want her daughter to come around the building. She says her daughter consumes drugs and she does not like that. During the hearing, she asked the landlord to please stop the daughter from coming to her unit. When asked how she would be able to prevent the daughter from entering the building, the tenant advised that she would do it by phone but gave no specific details.

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 it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

The tenant did not dispute any of the evidence presented by the landlord.

The actions of the person permitted on the property by the tenant, her daughter, has significantly interfered with or unreasonably disturbed other occupants of the building by the single action of pulling a fire alarm at 3:00 A.M. the night of October 2, 2018. The other tenants are particularly vulnerable people whose health could have been jeopardized by this one action. The quiet enjoyment of the other tenants in the building was adversely affected the night of October 2, 2018 by the tenant's daughter.

The daughter has shown a clear and consistent pattern of coming back to the tenant's rental unit despite warning letters sent to the tenant who appears incapable of preventing her from coming back. The landlord has proven that the well-being of the building's other tenants is at risk as long as the daughter has access to the building. Despite being given letters and warnings prior to being served with the Notice, the tenant has shown an inability to prevent her daughter from entering into the building. I find that the landlord has shown valid grounds for ending the tenancy as described on the Notice and I uphold it.

Section 55 of the *Act* states:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having examined the Notice, I find that it complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must be in writing and (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section

45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Pursuant to section 55 of the Act, having upheld the landlord's Notice, I grant the landlord an Order of Possession effective on the effective date stated on the landlord's Notice, January 31, 2019. Since the effective date has passed, the Order of Possession will be effective at 1:00 P.M. on February 28, 2019.

Conclusion

I grant an Order of Possession to the landlord effective at 1:00 P.M. on February 28, 2019.

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 20, 2019

Residential Tenancy Branch