



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ville Property Management Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

The tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause ("the Notice") pursuant to section 47(4) of the *Residential Tenancy Act* (the "Act") and compensation for the filing fee pursuant to section 72(1) of the Act.

Section 55 of the Act requires that where a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must also consider if the landlord is entitled to an order of possession if the tenant's application is dismissed and the Notice complies with the Act.

The tenant applied for dispute resolution on March 28, 2019 and a dispute resolution hearing was held on April 25, 2019. The tenant, and two agents for the landlord, attended the hearing, and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties did not raise any issues regarding the service of documents. However, I note that a third-party witness statement was submitted to the Residential Tenancy Branch by the landlord, but not served on the tenant for privacy reasons cited by the landlord. I explained to the landlord that I would not be considering this evidence in my decision.

I have reviewed evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, but only evidence relevant to the issues of this application are considered in my decision.

Preliminary Issue: Sufficiency of Notice

The tenant raised an objection to the validity of the Notice claiming the “Details of Cause(s)” section was blank. This section states that “Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).”

Section 52 of the Act—the section is titled “Form and content of notice to end tenancy”—states the following:

- In order to be effective, a notice to end a tenancy must be in writing and must
- (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,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

In this case, the landlord’s Notice had several grounds for ending the tenancy, as indicated by “X” marks in a total of ten boxes, next to each with a description as included in the Notice.

While I have the discretion to cancel the Notice if details are not described, my decision is based on whether the tenant had a reasonable comprehension or understanding of the issues that may have led to the Notice being issued.

In this case, the Notice was not issued in the absence of anything happening prior to March 26, 2019. In other words, the Notice was not sprung on the tenant in surprise, without any context behind the reasons that are indicated. On the contrary, the tenant and landlord were in communication about the several issues that the landlord had brought to the tenant’s attention for resolution.

I conclude that the Notice included sufficient grounds for ending the tenancy as required by section 52(d) of the Act, and as such I do not cancel the Notice on this basis.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to compensation for the filing fee?

Background and Evidence

The landlord's agents (hereafter the "landlord") testified and confirmed that the tenancy started June 1, 2018, and that monthly rent is \$2,500.00. The tenant paid a security deposit of \$1,250.00. A copy of the tenancy agreement was submitted into evidence.

The landlord testified that they served the Notice in-person to the tenant on March 26, 2019. A copy of a Proof of Services was also submitted into evidence. Regarding the Notice, the landlord argued that there were three primary reasons why they issued it.

First, the tenant was using the rental unit as an Airbnb without proper authorization or notification to the landlord

The landlord received a notice from the city about the rental unit being used as an "event" place. Upon further investigation, the landlord determined that the tenant was using the rental unit as an Airbnb. They told the tenant that he needed to get a business license, and also sign an addendum to the tenancy agreement.

The tenant eventually signed the addendum in December 2018. He also obtained a business licence (submitted into evidence) on October 12, 2018, which expired December 31, 2018; the licence was for a "Short-Term Rental."

This addendum, which was submitted into evidence, includes the statement that "The landlord hereby approved the Bed and Breakfast Accommodation (B&B) and short-term sublease of the above-mentioned property during the lease term." The parties both signed the addendum on December 15, 2018. This occurred after the landlord sent a letter to the tenant in October 2018 advising him that he could not run an Airbnb without consent of the landlord.

In rebuttal the tenant testified that he has "shut down" his Airbnb business, while the landlord testified that "we believe [the tenant] is still renting Airbnb without a licence."

The landlord argued that while they gave permission to the tenant to provide homestay (or Airbnb-type short-term rentals) they did not give permission for him to provide rooming house, or longer-term, subleases.

The second reason for issuing the Notice was regarding noise complaints. On January 28, 2019, the landlord received a text message from a neighbour and a complaint from one of the tenants in the house about excessive noise. The landlord told the tenant about the noise issues, to which the tenant responded that it was “not his problem.” Submitted into evidence are a few emails between the parties about the noise issues, which appeared to be a single incident on or about January 28-29, 2019.

The third reason for issuing the Notice was that the tenant was allegedly subleasing a garage that is located on the property. The police received a complaint from someone about an individual living in the garage. The landlord contacted the tenant about the issue of someone living in the garage, but the tenant did not say much in response to this. The garage was subsequently boarded up. Finally, the landlord reiterated that they cannot and do not want to continue renting to the tenant because they argue that the rental unit no longer safe.

During his testimony and submissions, the tenant testified that (1) the Airbnb is no longer in operation, and hasn't been since December 2018, (2) the garage has been boarded up since last year and that no one lives in it, and (3) the noise is from other occupants and tenants walking around and talking.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this case, the Notice indicated, *inter alia*, that the tenancy was being ended due to (1) the tenant failing to comply with a material term and not correcting the situation within a reasonable time after the landlord gave written notice, and (2) the tenant “seriously

jeopardizing the health or safety” of the landlord or another occupant. And, that the tenant “significantly interfered with or unreasonably disturbed another occupant.”

Here, the landlord not only testified that they were aware at the start of the tenancy that the tenant was intending to operate an Airbnb business, they ended up signing an addendum permitting the tenant to operate either a bed and breakfast (presumably an Airbnb, though the tenant did not testify if he served breakfast while the Airbnb was operating) or a short-term sublease. The landlord argued that he was only permitted to run a short-term accommodation such as an Airbnb but not a longer-term accommodation. However, there is nothing in the addendum that specifically defines or sets a limit on what is meant by “short-term.” As the landlord was the party responsible for drafting the addendum, any vague or unclear terms in that addendum cannot be later interpreted to the benefit of the landlord.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground of ending the tenancy based on a section 47(1)(h) breach of the Act. Further, I note that while the landlord “believes” the tenant is still running an Airbnb business—which in any event is permitted—they provided no documentary evidence that this is the case.

Regarding the noise complaint, the landlord provided a copy of an email to the tenant about a noise complaint, or complaints. However, these arose from a one-time instance on January 28, 2019. I do not have an earlier reference in a police report to complaints about electronic dance music on or about November 17, 2018; the landlord did not provide any testimony regarding this earlier incident.

While a noisy neighbor is indeed a disturbance, noise caused once or twice over a few months does not constitute a significant interference or an unreasonable disturbance. That is not to say that a one-time noise cannot be significant or unreasonable, but to meet the definition in the Act is a high bar to reach. It would be unreasonable and unfair to end a tenancy because of a tenant making noises on one or two occasions. Based on the insufficient evidence that the landlord provided regarding the purported noise complaints, I conclude that the landlord has not met the onus of establishing this ground on which the tenancy was to end on which the Notice was, in part, issued.

Finally, regarding the garage in which a person may or may not have lived, the landlord provided no documentary evidence establishing that (A) the tenant was somehow

responsible for permitting said person to reside in the garage, and (B) if there were such a person in the garage how that person's presence would give rise to any of the several grounds on which the Notice was issued. In short, I find nothing resulting from an alleged short-term (that is, perhaps one to two weeks' residency) occupation by an unknown person that would place the landlord's property at risk or that might give rise to a safety issue to either the landlord or any of the occupants.

In summary, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving any of the many grounds on which the Notice was issued.

As such, the landlord's Notice, dated March 26, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

The tenant is entitled to compensation of \$100.00 pursuant to section 72(1) of the Act. In satisfaction of this the tenant may deduct \$100.00 from rent for May or June 2019.

Conclusion

I conclude that the Notice is cancelled and of no force or effect. The tenancy continues until it is ended in accordance with the Act.

The tenant is awarded \$100.00 in compensation pursuant to section 72(1) of 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 Act.

Dated: April 25, 2019

Residential Tenancy Branch