



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JRKC HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company, as well as a director of the landlord company attended the hearing, and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and give submissions.

During the course of the hearing, due to technical issues with the on-line system for the parties to provide evidence, I was not able to open any evidentiary material of either of the parties, and I assured the parties that I would review all of the evidence prior to making this Decision. I have now been able to access all evidence. No further issues with respect to service or delivery of documents or evidence were raised, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to respect the tenant's right to quiet enjoyment by refraining from sending numerous text messages to the tenant?

Background and Evidence

The landlord's agent (JM) testified that this fixed term tenancy began on December 1, 2006 and expired on November 30, 2007 thereafter reverting to a month-to-month tenancy and the tenant still resides in the rental unit. Rent in the amount of \$965.00 per month was payable on the 1st day of each month, which has been raised from time-to-time and is currently set at \$1,315.00 per month, and there are no rental arrears. At the outset of the tenancy the tenant paid a security deposit in the amount of \$482.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 8 units. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the landlord also owns an adjacent building across the lane which has a bike storage facility in a garage, which is a secure location. The landlord's agent went to check on it and found a stranger in that locker room and asked who he was. The stranger said he was a friend of the tenant's and was putting his bike away. The landlord knew that the tenant had bikes in there but didn't know that a friend of the tenant was using it. The landlord talked to the tenant and told him to cease allowing others to use the storage facility immediately and gave a "3 strikes notice" and told the tenant that was strike 1. The same process is used with all tenants.

On December 22, 2018 the landlord sent a text message to the tenant saying that the previous day he had learned that another person had keys. The landlord observed this person to let himself into the building, and introduced himself saying that he was staying the tenant's apartment while the tenant was out of town.

Paragraphs 13 and 19 of the tenancy agreement state that a person not listed as a tenant must not stay in the rental unit in excess of 2 weeks without permission of the landlord, and is a material term of the tenancy agreement:

"13. ADDITIONAL OCCUPANTS. No person, other than those listed in paragraph 2 above, may occupy the rental unit. A person not listed in paragraph 2 above who resides in the rental unit for a period in excess of two weeks in any calendar year will be considered to be occupying the rental unit contrary to this Agreement and without right or permission of the landlord. This person will be considered a trespasser. A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such person to become an approved occupant. Failure to apply and obtain the necessary approval of the landlord in writing is a breach of a material term of this Agreement. The landlord may at his option give notice to the tenant to

immediately correct the breach. If the tenant fails to correct the breach within a reasonable time after having been given written notice by the landlord, the landlord has the right to end the tenancy.”

“19. OCCUPANTS AND INVITED GUESTS. The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests. If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through arbitration under the Act.”

The only person named in paragraph 2 of the tenancy agreement is the tenant.

Also provided for this hearing by the landlord is an Appendix – “Rules & Regulations” signed by the tenant which states, in part:

“Occupants

1. Only the tenants listed in the Tenancy Agreement are permitted to live in the premises. Should your circumstances change and you wish to bring in a replacement roommate (if applicable), permission must be given in advance and in writing by the Management.”

The landlord is concerned about security of the rental complex, and testified that another tenant previously rented a suite on Air BNB, which is not allowed.

The landlord gave a Caution Notice to the tenant, a copy of which has been provided as evidence for this hearing. It states, in part:

“Please have all the extra keys returned to us from the outside parties by February 21st, 2019. Please place them in the black box. Thank you.”

Checkmarks appear also on the form stating Grounds for Termination:

“The tenant or a person permitted on the residential property by the tenant has put the landlord’s property at significant risk,” and, “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 tenant did not comply, no keys have been returned to the landlord, and the tenant has not replied.

Copies of numerous text messages have been provided by both parties as evidence for this hearing.

The landlord's agent further testified that he served the tenant with a One Month Notice to End Tenancy for Cause on March 7, 2019 by taping it to the door of the rental unit, and his wife was also present. A copy has been provided for this hearing and it is dated March 7, 2019 and contains an effective date of vacancy of April 30, 2019. The reason for issuing it states: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The director of the landlord company (RM) testified that having guests while the tenant is home is okay, but no one should be there when he's away. Guests have said that he's out of town while they are there. That's not a guest. When the landlord's agents find someone who has access who doesn't live there, other guests can't be secure. It's not a hotel. The tenant never asked permission ever, and the landlord's agents don't know how many people have been staying in the rental unit.

The landlord's witness is the previous landlord and testified that he gave the tenant 1 key to the bike storage; he's a long-term tenant and has been storing his bike in that space for a long time. The witness had explained the security access to the tenant, about where to access it and explained that people are concerned about bike security, and it's not visible. He did not give the tenant permission to allow others to park their bikes in there, and testified that doing so would have been surprising and shocking.

The tenant testified that he hasn't broken any rules or conditions in the tenancy agreement. He has never made any duplicate keys for the bike locker. A friend of 20 plus years was visiting from out of the Country and stayed at the rental unit for a few days, and the tenant allowed him to use the tenant's bike. The tenant had 2 bikes in the bike locker. The tenant was busy when the friend returned with the bike, so the tenant gave the guest a key to lock it up again, and there was no security concern. When the guest returned the key he told the tenant that he ran into the landlord. The tenant spoke to the landlord's agent who said that having others in there might draw an inference that in the case of theft or damage, it would bring suspicion to the tenant. There were no other occasions that another person used the tenant's key.

The tenant further testified that he has a spare set of keys in case of loss, and loaned keys to a guest or friend staying with the tenant which only happens a couple of times per year. The guest that the landlord's agent spoke about on December 21, 2018 was visiting and the tenant gave him keys to the apartment intending to meet him there. The tenant was on his way back to the office, and told the guest he would meet him at the apartment later.

The next day, the landlord's agent texted the tenant asking who the guest was. The tenant was too busy to respond and the landlord's agent texted again the next day. The tenant didn't respond again, but the landlord's agent telephoned the tenant later in the day. The tenant had intended to get back to him, and explained that the person the landlord's agent saw is a friend/guest and that the tenant didn't know what concern is.

The landlord has conjured this story that the tenant has given keys to strangers, which the tenant denies, and denies any rental on Air BNB ever. On one occasion the tenant had a friend drop off a rent bank draft because the tenant was away and ran out of cheques. He may have spent the night, but he's a trusted friend. The tenant has never had anyone stay beyond 2 weeks.

The tenant has also been accused of a party, but testified that he had no part in that.

The tenant's out of town business varies and sometimes meets with retailers or buyers out of town for a few days or a few weeks, but the longest in about a year and a half was for 3 ½ or 4 weeks.

The tenant's claim for an order that the landlord comply with the *Act*, regulation or tenancy agreement is about harassment receiving numerous text messages from the landlord's agents, and testified that he receives an enormous amount; 30 in 15 days, or twice per day on average. The landlord's agent has also used the tenant's rented parking spot more and more often for tradespeople. A couple of times he has asked the tenant, and the tenant has accommodated it, but the tenant wants the text messages to stop. This is the landlord's business, but also the tenant's home, and the tenant works a lot and wants to live in the rental unit in peace and for the landlord to properly correspond with the tenant and respect his privacy.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

I have also reviewed the tenancy agreement, and I find absolutely no evidence to support the claim of the landlord that the tenant has allowed any guests to stay in excess of 2 weeks. I accept that the landlord has an obligation to keep the rental complex and the bike storage space secure for all tenants, but I am not satisfied that the

landlord has established that any other persons have a key to the building, the apartment or the storage locker. Further, there is nothing in the tenancy agreement or the *Act* that prohibits a tenant from allowing guests, whether overnight or not, while the tenant is not home. If that were the case, the tenant would not even be permitted to allow his mother or close family member stay until the tenant, who works sometimes out of town, returns home. I find that to be contrary to the *Act*, and not a part of the tenancy agreement. The *Act* specifically states:

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

I find that the landlord has failed to establish that the tenant has breached a material term of the tenancy agreement. Therefore, I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues.

The *Residential Tenancy Act* also states that I may make any orders necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord or tenant comply with the *Act*, the regulations or a tenancy agreement.

Considering that the bike storage space is in another building, I order the tenant to refrain from allowing any guest or friend of the tenant to access the bike storage unit.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, I have reviewed the evidentiary material which includes numerous text messages from the landlord's agent to the tenant over a period of almost 3 months. The evidence shows that on one day, the landlord sent 11 separate messages to the tenant between 10:39 p.m. and 11:05 p.m. A tenant is entitled to quiet enjoyment, reasonable privacy, free from unreasonable interference, and I find the number of text messages to be excessive. I order the landlord to correspond with the tenant and refrain from sending text messages more than once per week unless they are in response to a text message sent to the landlord or the landlord's agents by the tenant.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated March 7, 2019 is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with Section 28 of the *Residential Tenancy Act* by providing the tenant with quiet enjoyment of the rental unit, and to correspond with the tenant, refraining from sending text messages to the tenant more than once per week unless they are in response to a text message sent to the landlord or the landlord's agents by the tenant.

I further order the tenant to refrain from allowing guests or friends to access the bike storage unit.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: April 30, 2019

Residential Tenancy Branch