



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on April 5, 2019.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice issued be cancelled?

Background and Evidence

The tenancy began on July 1, 2016. Current rent in the amount of \$1,011.00 was payable on the first of each month. The tenant paid a security deposit of \$*460.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on May 5, 2019.

The reason stated in the Notice was that the tenant has:

- Breached of a material term of the tenancy agreement which was not corrected within a reasonable amount of time after written notice to do so;
- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to damage the landlord's property;
- The tenant or a person permitted on the property by the tenant has caused extraordinary damages to the unit; and
- The tenant has not done the required repairs to the unit.

The landlord's agent testified that the housing complex provides family housing for approximately 34 families.

The landlord's agent testified that starting in January 2019; they started to receive complaints about the tenant and the tenant's guest JH. The agent stated that apparently the issue has been going on for a longer period of time; however, the occupants of the complex were reluctant to come forward.

The landlord's agent testified that they have received ongoing complaints regarding the loud noise that is coming from the tenant's rental unit. This noise consists of yelling, screaming, fighting and unreasonable noise.

The landlord's agent testified that on January 4, 2019, there was yelling and screaming coming from the unit, waking the children in neighboring units.

The landlord's agent testified that on January 9, 2019, there was also yelling, screaming and JH was throwing things out of the unit.

The landlord's agent testified that the tenant's guest JH, has also has engaged in threaten behaviour to one of the other occupants. Calling the occupant degrading, vulgar names, and referring to the occupant as a baby killer. The agent stated that this is particular troubling as this occupant has lost a baby due to miscarriage.

The landlord's agent testified that the police were called regarding the above incident; however, JH had already left when the police attended. The agent stated JH returned shortly afterwards and again was acting in an aggressive manner towards the occupant and the police returned.

The landlord's agent testified that the police have attended the premises over eight different times, related to loud noise, yelling and screaming. The agent stated that they believe the tenant is in an abusive relationship; however, they cannot continue the tenancy as the other occupants have a right not to be disturbed, bullied or yelled at.

The landlord's agent testified that they have spoken with the tenant on several occasions and issued a warning letter to the tenant on January 11, 2019; however, the behavior continued on January 14, 2019. The landlord stated that there was a brief period when JH had left and the noise complaints stopped. However, JH has returned and they continue to receive complaints of yelling, screaming and loud noise. The agent stated that they have an obligation to the other occupant of the complex and seek to end the tenancy

The landlord's agent testified that they also attended the tenant's rental unit, which there were holes in the walls, which appear to be from fighting and doors were broken of the hinges. The agent stated that they were unable to complete the inspection as the rental unit was extremely dirty and they believed it was a health and safety issue.

Filed in evidence are witness statements.

The witness statement of MC reads in part,

"... Almost every day there is no just yelling, but irate screaming at the top of this lungs and full on fighting coming from the unit, often her screaming back " J... just stop, or J.. you are hurting me. ... these fights from the unit are heard throughout the whole townhouse complex, not just the direct neighbours. These fights that start indoors have also move outside. Causing the people to call the police as well as getting our kids moved inside. ...Most recent there was a disturbance heard on January 14th at 12:20am the typical screaming. I went outside from being sleeping to check what the noise was. It was them, Also on January 9th the cops were there and took him away...."

[Reproduced as written.]

The witness statement of CH reads in part,

“... Our entire neighborhood on this block lives constantly with loud yelling and screaming with the most vulgar language I’ve ever experienced. ... We have called the police over 8 different times ... The abusive behaviors continue to disrupt our peace and quiet here.”

[Reproduced as written.]

The witness statement of MS reads in part,

“... the police were called on Friday, Jan 4 around 9:30pm/10pm. The fight was going on for about 4-5 hours. Music was blaring so loud my couch was vibrating. I told him to keep it down and he started calling me names and scaring my kids...Wednesday Jan 9, 2019, ...He was yelling and throwing stuff out. ... I went and yelled to stop nobody wants to hear it, yet again started to call me names such as Bitch, ...baby killer real hurtful things. I called the police showed up and he was gone. Came back and started fighting throwing things again woke my kids... I called police again they came found him and arrested him.”

[Reproduced as written.]

The tenant testified that they talk loud and play their music loud. The tenant stated that they do have argument with JH, as all people have disputes. The tenant stated that the walls are very thin and you can hear the daily noise, such as talking between the walls.

The tenant testified that on one of these report complaints there was not a fight. The tenant stated that JH was not there. The tenant stated that they drop a hot drink on their foot and they yelled due to the pain.

The tenant testified that JH and the neighboring occupant do not like each other and does not deny JH called them names or yelled at them. The tenant denies there is any abuse.

The tenant testified that there are two broken doors downstairs, which one broke from normal use and the other door was broken. The tenant stated that they have arranged to have the doors repaired. The tenant denies they are any holes in the walls.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Breached of a material term of the tenancy agreement which was not corrected within a reasonable amount of time after written notice to do so.

In this case, I am satisfied that the tenant has breached a material term of the tenancy agreement – Conduct. The tenant has allowed their guest JH on to the property. JH has disturbed, harassed and annoyed other occupants, by engaging in behaviour that is not appropriate, such as yelling, screaming, calling other occupants vulgar, degrading names and referring to them as a baby killer.

The tenant did not deny JH and the occupant have a dislike for each other; however, it was the tenant's responsible to ensure their guest JH did not engage in such behaviour as the tenant is responsible for the actions of their guests.

Further, by the tenant's own admission they talk loud, play their music loud and fight from time to time. While I accept that the noise may transfer easily due to the construction of the premises, I find it is the tenant responsibility, and it is within the tenant's control not to talk loud or play their music loud. Only normal household noise is expected and reasonable.

Further, at no time is fighting an acceptable behaviour. The tenant should have asked JH to leave, rather than to engage in fighting that allows unreasonable disturbance to occur to the other occupants.

The tenant was warned both verbally and in writing that the landlord would end the tenancy if such behavior continued. The tenant did not correct the actions of their guest or their own behaviour and further complaints were received.

I find the evidence does support the Notice was issued for the above reason stated. As I have ended the tenancy based on a breach of a material term of the tenancy agreement, I find it not necessary to consider the balance of the reasons stated in the Notice.

I find the Notice has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

In this case, the Notice has an earlier effective date than allowable under the Act. That date automatically corrects to May 31, 2019. The tenancy will end on May 31, 2019 in accordance with the Act.

As the tenancy legally ends on the corrected effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **May 31, 2018**. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application to cancel the Notice, is dismissed. The landlord is granted an order of possession.

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: May 28, 2019

Residential Tenancy Branch