



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTLAND WILLINGDON LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated May 16, 2019. The Notice alleges: a) that the tenant has permitted an unreasonable number of occupants in the rental unit, b) that either the tenant or a person he's permitted on the premises has significantly interfered with or unreasonably disturbed another occupant or seriously jeopardized the health or safety or lawful right or interest of another occupant or the landlord, and c) that the tenant or someone he's permitted on the property has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

In the second application the landlord seeks an order of possession pursuant to that Notice.

The listed persons attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the evidence demonstrate that the tenant has given good cause to end the tenancy under any of the grounds listed in the Notice?

Background and Evidence

The rental unit is a one bedroom apartment in a 58 unit apartment building. The tenancy started in October 2018 for a one year fixed term at a monthly rent of \$875.00. The landlord holds a \$437.50 security deposit. The tenant had been the landlord's

tenant in another building immediately prior to this tenancy and, although there had been a dispute between them concerning rent, the landlord moved the tenant to this building in contemplation of a renovation or demolition of the first building.

Mr. Z. for the landlord presents four complaint letters in support of the Notice.

The first is dated May 1, 2019 from a tenant apparently living below this tenant who indicates that tenant above in this unit is always having parties and making tremendous noise. They cannot sleep because of the noise and are contemplating leaving.

The second complaint letter is from another purported tenant in the building reporting that her neighbours on the third floor are “crazy” are “using drugs on the floor” and “often coming homles [*sic*] and staying here.” She says her daughter is scared and she doesn’t want to invite company because “they” are making this apartment so dirty and dangerous.

The third letter is a typed letter dated May 25, nine days after the Notice. It is from two tenants of an unidentified apartment in the building. They say the occupants of this apartment have been partying and carrying on until 2:00 a.m. or later. It has been going on for so long they can’t remember; at least three months. As well the tenants of the apartment shout loudly and make rude, crude comments with sexual innuendo. They smoke on the balcony and throw butts down below.

The fourth complaint letter is dated May 31 from two people said to be tenants in the building. It is a formal complaint about the apartment in question saying the apartment has been illegally allowing homeless people into the building to spend the night and that it is a threat to other tenants. As well there is constant partying and noise on week nights. The letter indicates multiple complaints to the building manager.

In response the tenant’s advocate takes issue with the vagueness of the allegations and the lack of a complaint process.

The tenant’s position is that the complaining tenants are mistaken that the disturbance is coming from his place and are also wrong about him letting homeless people into the building.

Analysis

The ending of a tenancy is a very serious matter. A landlord will be required to present clear and cogent evidence in support of a contention that a tenant has given cause to be evicted.

In this case the landlord's evidence is composed of letters from persons said to be tenants in the building. Each of those letters is vague about any incident. It cannot be determined when any incident occurred, its particular nature (other than "partying") or duration. A tenant faced with such allegations cannot reasonably prepare a defence. In large part I agree with Mr. D.D.'s comments on these points.

As well, the complainants did not testify at this hearing. An opportunity to clarify or expand on their written testimony has been lost. The tenant's opportunity to challenge the evidence with questions is impossible. Such a circumstance significantly devalues that evidence.

I also agree with Mr. D.D. that the landlord has not carried out a reasonable investigation of any of the complaints. It is apparent that on at least some occasions the building manager has texted the tenant notice of a noise complaint against him and the tenant has texted back that it is not him. In such circumstances it is, in my view, incumbent on the landlord to conduct even a cursory inquiry by, for example, immediately attending the scene or having an agent attend and confirm whose allegations are correct.

Dealing with the Notice claims;

1. There is no evidence that the tenant has an unreasonable number of occupants in his rental unit.
2. The evidence that the tenant or a person he's permitted on the property has significantly interfered with or unreasonably disturbed another occupant or seriously jeopardized the health or safety or lawful right or interest of another occupant or the landlord, is too vague to permit any response and is in the form of unsworn statements not subject to challenge by cross examination.
3. There is no assertion of any particular "illegal" activity by the tenant and no proof of any.

As a result, the landlord has failed to support the claims in the Notice with evidence convincing on a balance of probabilities and the Notice must be cancelled.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated May 16, 2019 is cancelled.

The landlord's application is dismissed.

This decision is not a determination that the tenant has not engaged in interfering, disturbing or illegal conduct but merely a decision that the landlord has not proved it on a balance of probabilities at this hearing. Indeed, video material filed by the tenant but not referred to at hearing would appear to show him making misogynistic remarks to a woman in an apartment hallway. I would therefore warn the tenant that the landlord is free to issue another Notice for any conduct occurring after the May 16 date of this Notice or for conduct that occurred before the Notice but that was reasonably undiscoverable.

I would also caution the landlord that its job involve more than simply arranging "he said she said" dispute hearings between tenants. A landlord has a duty to inquire and investigate as necessary anytime a reasonable sounding complaint is received. It is part and parcel with a landlord's covenant to provide quiet enjoyment to its tenants.

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: July 09, 2019

Residential Tenancy Branch