



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, DRI

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated May 30, 2019 and received by the tenant on May 31, 2019. The Notice claims that the tenant or a person permitted on the property by her has significantly interfered with or unreasonably disturbed another occupant or the landlord. She also seeks to dispute the effective date of a rent increase.

It was agreed by the parties that the named respondent Mr. M.D. is not the tenant's landlord. The landlord is a corporation: P I R Inc. The landlord has been added as a respondent in the style of cause by consent.

Both parties attended the hearing, the landlord by its representative Mr. M.D. 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

Has the tenant significantly interfered with or unreasonably disturbed another occupant?
Has the landlord issued a notice of rent increase with an incorrect effective date?

Background and Evidence

The rental unit is a one bedroom townhouse in a complex composed of about 30 townhouses. There is a written tenancy agreement. The tenancy started in September 2017. The tenancy agreement indicates that the monthly rent was \$730.00, now

\$749.00, however the parties indicate that it is the “market rent” and that the tenant has a government subsidy which reduces her share of the rent to, presently, \$301.00.

The landlord holds a \$365.00 security deposit.

Mr. M.D. for the landlord has no personal knowledge about the alleged conduct by the tenant that is said to justify her eviction. He says that the resident manager and other tenants have been giving complaints regarding this tenant.

The Details of Cause(s) portion of the Notice states:

[The tenant] continues to smoke on the property which ruins the peaceful enjoyment for other tenants. Some tenants in the building cannot leave their door open without having the smell of smoke overpower their unit. [The tenant] was delivered a warning letter to stop smoking on August 9, 2018. [The tenant] also been caught on camera stealing a plant from a neighbours unit. Lastly, [the tenant] has no respect for other peoples privacy, she is often caught peaking into other tenants units, this has resulted in two police reports.

The August 9, 2018 warning letter about smoking was adduced.

The tenant’s immediate next door neighbour installed a security camera pointing into the yard behind the townhouse and “caught” the tenant purportedly stealing a potted plant from the yard. The video was produced and viewed at the hearing.

Mr. M.D. referred to a “formal complaint” letter dated May 15, 2019 from a neighbour. The tenant denied receiving a copy of the letter before the hearing. Mr. M.D. withdrew the letter as evidence.

Mr. M.D. referred to a “more complaint” letter dated May 26, 2019. It is an email to the landlord from the tenant’s immediate neighbour reporting that while she was away from the home the tenant was in her backyard videoing the house and garden. This caused her mother to have a panic attack. Her mother phoned for emergency help. The author indicates the ambulance and police were on the scene for two hours. She indicates that the attending constable spoke to the tenant but indicated that a harmonious solution was unlikely and intimidated the tenant had psychological problems. She says the tenant has caused her mother to fear for her safety.

The tenant testifies that she smokes but never in her townhouse or on the property of the complex. She admits to frequently visiting another tenant who lives immediately on the other side of the complaining neighbour's townhouse and who is permitted to smoke in his rental unit. She says that even there she does not smoke.

She says she has had no complaints against her by other tenants but for this instance. It is her position that there is a grass covered area of approximately five meters in width that runs across the back of all the townhouses in her row and that it is common property upon which she is entitled to pass.

She says that the neighbour's plant she was shown to be removing in the video was actually on the common area and was obstructing the most level and reasonably passable portion of that common area. She says she merely moved the plant off the travelled portion of that common area. She submits a photo showing that the alleged common area is on a significant incline down to a relatively level portion running at a right angle along the trellis/fences dividing the townhouse backyards. While the townhouses have these fences separating backyards, there are no fences between the back yards and the alleged common area behind each unit.

The tenant says she has positive references from other tenants in the complex and that a resident manager told her to ignore the complaining neighbour.

Regarding the issue of the rent increase, the tenant does not dispute that with her subsidy ceasing she will be responsible for a new, market rent of \$730.00. She says that since the landlord attached the notice of rent increase to her door on May 29, and since such service is deemed to have been received three days after being attached to the door (s. 90 of the *Residential Tenancy Act* (the "*Act*")), then she was deemed to have received it on June 1. As such a notice demands three clear months' notice in advance (s. 42(2) of the *Act*), then it could not take effect until October 1 and not September 1, as stated in the notice.

Analysis

The Notice to End Tenancy

The landlord has not proved on a balance of probabilities that since the warning letter of October 2018 the tenant has been smoking where she shouldn't be.

The documentary evidence, in form of an unsigned email from a neighbour alleging conduct she did not observe and relating her conversations with a police officer is very remote evidence and of limited probative value, being unsworn, second hand evidence unchallenged by questioning at this hearing. I find the tenant's explanation to be a reasonable and believable one and that she is exercising her right (undisputed at this hearing) to pass and repass along the common area behind the townhouses and to clear her path of obstructions, likely placed there with the intent to obstruct.

I find that the landlord has failed to establish the grounds given for eviction in the Notice in question and I set that Notice aside.

The Rent Increase

I dismiss the tenant's claim about the effective date of the rent increase. The deeming provisions of s. 90 of the *Act* are not conclusive but are rebuttable presumptions. In this case the tenant in her application admits she received the notice of rent increase in May. Given that admission she cannot possibly rely on the deeming provisions in s. 90 to say she received it later.

Conclusion

The Notice to End Tenancy dated May 30, 2019 is hereby set aside and cancelled. The remainder of the tenant's application is dismissed.

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 18, 2019

Residential Tenancy Branch