



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated May 30, 2019 and setting the end of tenancy for June 30, 2019.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on May 30, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on June 6, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 30, 2019?

Background and Evidence:

The tenancy began on August 1, 2015. The present rent is \$805 per month payable in advance on the first day of each month. The rent is subsidized and the tenant pays \$320 per month. The tenant paid a security deposit of \$172.50.

Briefly, the landlord gave the following evidence:

- In the summer of 2018 the landlord received a complaint from another tenant who told the landlord that the tenant punched her. The assault took place off of the rental property. The dispute occurred after she had confronted him when he took her money to purchase marijuana but failed to follow through on the purchase. The RCMP were called and the tenant was interviewed by the RCMP and the landlord.
- The landlord testified the tenant admitted the assault to the landlord. The tenant appeared to be unconcerned about it as it only involved marijuana. The landlord does not know whether the tenant was charged. The landlord takes the position this type of behavior is unacceptable and can never happen again.
- Over the past several months the landlord has met with the tenant to discuss numerous incidents of increased unacceptable behavior of the tenant and his guests.
- On April 23, 2019 the landlord received a report from another tenant of two shady characters who were waiting in the lobby. She saw the characters prior to leaving on an errand and they were still there 45 minutes later.
- Landlord Witness #2 testified that he questioned the individuals who told him they were waiting to see the tenant. One of the individuals was Tenant Witness #1. He asked them to leave and a significant confrontation occurred. Tenant Witness #1 ended up swearing at him and threatening him which included the statement "bad stuff is going to happen." This individual invited him outside to engage in a fight. When this was brought up with the tenant he denied knowing who they were.
- On May 30, 2019 two employees of the landlord witnessed the tenant involved in a drug transaction. The employees were in the third storey of the complex cleaning a rental unit. They noticed a white Volkswagen pull up and the tenant and tenant's Witness #1 engage in a discussion. They further witnessed the tenant give the passenger of that car a baggy of a substance and a wad of money was exchanged.
- Landlord Witness #1 gave evidence confirming this transaction. Landlord's Witness #2 also confirmed this transaction and testified the person accompanying the tenant was Tenant's Witness #1.
- The tenant called the landlord a "f...king bitch" after he was served with the Notice to End Tenancy.

The tenant gave the following evidence:

- He testified he does not know the individuals referred to by the employee of the landlord with regard to the incident which occurred on April 23, 2019. He was not present and did not allow them on the property.
- He denies hitting the other female tenant which allegedly occurred in the summer of 2018. He admits being interviewed by the police. He further stated the police told him that her evidence was not credible as she changed her story to them. He further denies admitting this to the landlord. He has never been charged for this alleged incident.
- He denied being involved in the drug transaction alleged by the landlord to have occurred on May 30, 2019. He admits talking to some friends of tenant Witness #1 who were in a car on that date. He was on the sidewalk of the Municipality at the time. He further testified the evidence of the landlord's employees is not reliable as there are trees blocking their view.
- He testified he is not a drug user and does not sell drugs.
- He alleged he is being discriminated against because he is first nations and has long hair.
- Tenant witness #1 testified at the hearing and denied being the person involved in the confrontation that occurred on April 23, 2019. He referred to a statement from another tenant in the building who stated Tenant's Witness #1 was not one of the two individuals who were present.

Grounds for Termination:

The one month Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant 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 or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord

The tenant signed a Crime Free Addendum at the time he signed the tenancy agreement.

Policy Guideline #32 includes the following:

“The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere consumption of the drug would not meet the test of an illegal activity which lab), would form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.

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Circumstances for Ending the Tenancy The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

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Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to present sufficient evidence to establish cause to end the tenancy based on the grounds set out in the Notice to End Tenancy. There may be other grounds to end the tenancy but if a landlord has not identified those other grounds an arbitrator cannot consider them. To do so would amount to a denial of natural justice.
- Further an arbitrator is only permitted to consider conduct to the date of the Notice to End Tenancy. Any subsequent misconduct may be grounds for a subsequent Notice to End Tenancy but cannot be considered in determining whether there are grounds in this Notice to End Tenancy.
- The first ground identified by the landlord is that the tenant or a person permitted on the property by the tenant has “put the landlord’s property at significant risk”. I determined the landlord failed to provide sufficient evidence to establish that the tenant or person permitted on the property by the tenant has put the landlord’s property at significant risk. The alleged assault which occurred in 2018 took place off the property and do not involved the landlord’s property. The alleged confrontation on April 23, 2019 between the landlord’s employee and a friend of the tenant do not involved putting the landlord’s property at significant risk. Similarly, the drug transaction which occurred allegedly occurred in May 30, 2019 does not involve putting the landlord’s property at significant risk.
- I determined the landlord failed to prove that the confrontation between landlord’s employee and two individuals on April 23, 2019 involved individuals permitted on the property by the landlord for the following reasons:
 - While the landlord’s employee is adamant it was Tenant’s witness #1 the Tenant’s witness #1 is equally adamant it was not him. The statement from another tenant indicates Tenant’s Witness #1 was not present. The landlord submits little weight should be given to this statement. However, the landlord has the burden of proof.

- The landlord failed to prove that if such a confrontation occurred between the employee and Tenant's Witness #1 that it would amount to ground to end the tenancy on the basis of "illegal activity." There is no evidence that the landlord reported the incident to the police at the time. The landlord did not take steps to end the tenancy at that time. There is insufficient evidence to conclude that the incident significantly affected other residents. The landlord failed to prove that the lawful right or interest of another occupant of the landlord has been significantly affected.
- Further, I determined the landlord failed to prove that the alleged drug sale, even if proven amounts to an "illegal activity" that gives the landlord ground to end the tenancy under this provision of the Act. The alleged sale occurred off the landlord's property. It did not affect the quiet enjoyment of other tenants. I did not damage the landlord's property and did not put the landlord's property in jeopardy.

Conclusion:

In conclusion I determined the landlord failed to present sufficient evidence to establish cause to end the tenancy based on the grounds set out in the Notice to End Tenancy dated May 30, 2019. As a result I ordered that the Notice to End Tenancy dated May 30, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

This decision is final and binding on the parties.

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 16, 2019

Residential Tenancy Branch