



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, FFL

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On July 8, 2019, the Tenant applied to cancel a One Month Notice To End Tenancy For Cause dated June 27, 2019.

On July 9, 2019, the Landlord applied requesting an order of possession based on issuance of a One Month Notice To End Tenancy For Cause dated June 27, 2019, and to recover the cost of the application fee.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence that is before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The parties testified that the tenancy began on April 15, 2016, and is on a month to month basis. Rent in the amount of \$844.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$382.50.

The Landlord testified that they have received numerous complaints about the Tenant's behavior on the rental property and that the Tenant has breached a material term of the tenancy agreement by smoking in her unit.

The Landlords submitted that the Tenant was served with a One Month Notice To End Tenancy for Cause. The reasons for ending the tenancy within the One Month Notice are:

Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
- Put the Landlord's property at significant risk

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice within the required time period.

The Landlord testified that the Tenant shows a pattern of aggressive behaviour towards other Tenants living on the rental property. The Landlord testified that other occupants are afraid of the Tenant. The Landlord testified that one Tenant moved out of the building and another Tenant is afraid to leave her suite. The Landlord submitted that the Tenant's behaviour is affecting the quiet peaceful enjoyment of the other Tenants.

The Landlord testified that on June 26, 2019, the Tenant was inebriated and there was an incident where the Tenant got into an argument with another Tenants and she became aggressive by yelling at them; threatening to hit them; and banging on their doors. The Landlord testified that the police were needed to attend to the incident.

The Landlord testified that the issues are often caused by the Tenant smoking in the rental unit. Due to the smell of smoke, an occupant who lives across the hall from the Tenant often opens a common area window located near the Tenant's door. The Tenant takes exception to the window being open and this has resulted in conflict between the two.

The Landlord testified that the rental property is non- smoking and the Tenant signed the tenancy agreement addendum agreeing to the non-smoking term.

The Landlord submitted that they have detected the smell of smoke coming from the Tenant's unit. The Landlord submitted that the Tenant was observed running into the hall with scented spray to mask the odor of smoke.

The Landlord testified that when they confront the Tenant on her behaviour she becomes difficult to deal with because she is unreasonable and aggressive with them.

The Landlord testified that they sent the Tenant a letter dated April 8, 2019, and cautioned the Tenant about her behaviour and smoking in the rental unit and that it is a breach of the tenancy agreement.

The Landlord testified that when the police attended the rental property on June 26, 2019, they informed the Landlord that there was a strong smell of cannabis in her rental unit.

The Landlord provided copies of complaints received and emails that were exchanged that document the disturbances. The Landlord's evidence contains details on events and incidents that occurred on the following dates:

February 4, 2019	Incident involving an argument between the Tenant and her neighbour
March 28, 2019	Incident involving the Tenant and her neighbour
April 8, 2019	Breach letter regarding behaviour and smoking issued to the Tenant.
June 26, 2019	Complaint from an occupant that Tenant upset her by yelling at her and said awful things to her. (related to a graduation event that the Tenant was not invited to)
June 26, 2019	Complaint received from Tenant's neighbour that

	Tenant kicked her door. Landlord spoke to Tenant who made a threat about her neighbor.
June 26, 2019	Email documenting a phone call between the Landlord and Tenant where the Tenant is reported to have made a threat to physically assault her neighbour if she touches the window.
June 27, 2019	Letter of complaint from another occupant of the property that Tenant was having a temper tantrum and opened and slammed her door at least 40 times.
June 27, 2019	Tenant's neighbor complained that Tenant was banging on her door, so she called 911 and police attended.

The Landlord testified that they offered to move the Tenant to a different rental unit on the rental property; however, the Tenant refused.

In reply, the Tenant testified that she does not smoke. She testified that she confronted another occupant on June 26, 2019, which was related to the graduation of her granddaughter. She testified that the occupant left in the elevator.

The Tenant testified that she is not aggressive towards other Tenants; however, she stated that she does not get along with her neighbor. She testified that she has never knocked on other Tenants' doors.

The Tenant testified that her neighbour regularly opens the common area window because of smoke. The Tenant testified that she regularly closes the common area window because it gets cold. The Tenant testified that she has never talked to her neighbour.

The Tenant later testified that on June 26, 2019, she did knock on her neighbor's door.

The Tenant testified that she detected a strong smell in the hallway so she sprayed the hallway with a scented spray maybe once.

The Tenant provided testimony acknowledging that she received the April 8, 2019, breach letter from the Landlord.

The Tenant provided testimony confirming that the police likely detected the smell of cannabis in her unit; however, she stated that she does not smoke in the unit. She testified that the cannabis is an oil that she rubs into her skin.

The Tenant provided a four page hand written submission stating that her neighbour opens the common area window at all times of the night. She submits that she her neighbour called the police on her for allegedly knocking on her door; but she was sleeping. She submits that she has not had a cigarette for more than 18 years. She submits that she does not go to church and the church owns the building and the minister does not like her. She submits that one of her neighbors is rude and racist. She submits that the Landlord was aware of the situation with the neighbour across the hall and did not do anything until after the incident.

The Tenant testified that the resident Landlord told her that the smell of smoke was coming from the 10th floor.

In reply, the resident manager testified that he did not tell the Tenant that the smoke was from the 10th floor; he informed her that someone smelled smoke up on the 11th floor.

The Landlord stated that if the One Month Notice is upheld they agree to an order of possession effective September 30, 2019.

Analysis

In the matter before me, the Landlord has the burden to prove that the reasons for ending the tenancy in the One Month Notice are sufficient and valid.

Based on the evidence and testimony of the parties before me, and on a balance of probabilities, I make the following findings:

I prefer the evidence from the Landlord that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find that there have been four incidents over a five month period where the involving the Tenant. I give the Tenant's testimony less weight because it was internally inconsistent. The Tenant initially testified that she has never knocked on other Tenants doors, but later in the hearing she testified that that on June 26, 2019, she did knock on her neighbor's door.

In addition the Tenant acknowledged the incident where she confronted another Tenant in the hallway by the elevator. This incident took place after the Tenant had received

the breach letter from the Landlord regarding disturbances to other occupants of the rental property.

Furthermore, I accept the Landlord's evidence that the Tenant made a comment regarding physical harm to her neighbor. I find that the Landlord's email evidence was documented on the date of the incident, and I find it to be reliable information on what the Tenant said to the Landlord during the phone call.

While I find that the Tenant is not fully to blame for the disturbances with her neighbour, I find that the Landlord has provided sufficient evidence to support that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Tenants application to cancel the One Month Notice To End Tenancy For Cause dated June 27, 2019, is not successful and is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession of the rental unit. Since the effective date of the One Month Notice was July 31, 2018, I find that the Landlord is entitled to an order of possession effective no later than 1:00 pm on September 30, 2019, after service on the Tenant.

The Landlord is granted an order of possession effective no later than 1:00 pm on September 30, 2019. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the One Month Notice is not successful and is dismissed.

I find that the Landlord has provided sufficient evidence to support that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord is granted an order of possession effective no later than 1:00 pm on September 30, 2019. This order may be filed in the Supreme Court and enforced as an order of that Court.

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: August 28, 2019

Residential Tenancy Branch