



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on August 26, 2019. The Tenant to cancel a 1-Month Notice to End Tenancy for Cause (the Notice), pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant's Notice of Hearing. However, the Tenant did not serve her documentary evidence until August 20, 2019, in person. As stated in the hearing, the applicant/tenant was supposed to ensure the respondent received her evidence no later than 14 days before the hearing, as per the Rules of Procedure. As stated in the hearing, the Tenant's late evidence is not admissible and will not be considered. The Tenant confirmed receipt of the Landlord's evidence, within the acceptable time frame.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on June 28, 2019. The Notice indicates the following reasons for ending the tenancy on the second page:

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.
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord issued the Notice for 2 reasons. In this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the first ground identified by the Landlord, as this ground is what my decision hinges upon.

I note the parties have had a contentious relationship for the past few months. The Tenant moved in at the beginning of April 2019, and since that time, the Landlord has had issues with smoking, disturbances and noise. The Landlord stated he issued the Notice for 2 reasons; the first is because the Tenant violated her tenancy agreement and smoked inside the rental unit (disturbing others in the building) and the second is because the police SWAT team entered the Tenant's rental unit on June 27, 2019.

The Landlord stated that the occupant who rented out the basement below unit had lived there for a couple of years, and once this particular Tenant moved into the main floor unit, issues began immediately. The occupant in the lower unit complained to the Landlord about the Tenant smoking in the house, significant noise and disruption, and also claimed his mail went missing. The Landlord provided text messages from the occupant of the lower unit as well as a formal written notice.

The Landlord stated that the occupant of the lower unit immediately started noticing smoking inside the house, and noise at all hours of the day. The Landlord stated that despite being spoken to numerous times by both himself and the occupant of the lower unit, the noise and smoking did not change. The Landlord stated that eventually, after

losing his patience, the occupant below gave his notice and left at the end of April. The Landlord stated that he left directly as a result of the Tenant in this rental unit.

The Landlord also pointed to the second issue behind his Notice, which is that the police SWAT team showed up and raided the Tenant's unit on June 27, 2019. The Landlord stated that the police would not tell him what the issue was about and after 10 or more police came and went (searched the house with a warrant), they left, and the Landlord issued the Notice. The Landlord stated he does not know what the issue was because the police would not tell him.

The Tenant stated that she did catch one of her friends smoking in the rental unit, but it did not continue to happen once she told him not to. The Tenant stated that this smoking no longer happens, and if it does, it is on the patio. The Landlord and the Tenant both acknowledge that the tenancy agreement allows the Tenant to smoke on the patio, but specifically prohibits her from smoking inside.

With respect to the police incident on June 27, 2019, where the SWAT team showed up, and entered the Tenant's rental unit, the Tenant stated that they were looking for her ex-partner, but he does not live there. The Tenant stated that this incident was not her fault, as she is fleeing domestic violence and her previous partner has police issues. The Tenant does not know what exactly the police were looking for, but stated they have not been back, as she is not the problem. The Landlord stated he issued the Notice after the SWAT incident, as he was tired of dealing with the issues.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, nor will I speak to all of the evidence and issues between the parties. I will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on June 28, 2019, and applied to dispute it on July 2, 2019.

I note the Landlord raised two main issues in the hearing as to why he issued the Notice. The first issue is regarding the Tenant's smoking. I note the Landlord is seeking to end the tenancy based on the Tenant's smoking inside the rental unit. However, the Landlord did not select the grounds on the Notice that states the following:

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.

Rather, he selected the following grounds:

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.
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- jeopardize a lawful right or interest of another occupant or the landlord.

I find there is insufficient evidence to show that the Tenant's smoking or any extra noise she caused amounted to an illegal activity which would warrant the Landlord selecting this ground. The grounds the Landlord selected on the Notice are for *illegal* activity. As such, I will focus on the issue of the police incident on June 27, 2019, as this is the only issue pertaining to any potential illegal activity. I do not find the smoking or noise disturbances sufficiently constitute illegal activity. My analysis as to whether or not there is sufficient cause to end the tenancy focuses on the grounds the Landlord selected on the Notice, and does not include consideration of grounds he did not select.

Next, I turn to the second issue, regarding the police SWAT team on June 27, 2019. I note there is no disputing that the police attended the rental unit on this day and entered the Tenant's unit. However, I note the Landlord has no evidence to support what this incident was about. It appears there was a warrant and a search was conducted on the Tenant's unit. However, I also note the Tenant stated she is fleeing an abusive relationship and her previous partner is who the police were looking for. I note the Tenant's previous partner does not live there, which is why the police have not been back.

After reviewing the totality of the evidence on this matter, I note the Landlord has provided insufficient documentary evidence to substantiate that the Tenant, or someone invited over by the Tenant, has engaged in illegal activity, such that the Landlord was entitled to end the tenancy under the grounds he selected. I do not find the Landlord has sufficiently demonstrated and substantiated the reasons behind the Notice.

Given my findings on this matter, I find the Landlord has not established that there are sufficient grounds to end the tenancy. The Tenant's application is successful and the Notice received by the Tenant on June 28, 2019, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

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 26, 2019

Residential Tenancy Branch