



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 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

The Tenant stated that on July 10, 2019 the Dispute Resolution Package was personally served to the Landlord. The Landlord acknowledged receipt of these documents.

On August 09, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant, on August 09, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On August 12, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All of the evidence accepted as evidence for these proceedings has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Preliminary Matter

With the consent of both parties this Application for Dispute Resolution was amended to include the full residential address, as provided by both parties at the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on August 01, 2017;
- rent is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause was posted on the Tenant's door on June 28, 2019;
- the Notice to End Tenancy declared that the rental unit must be vacated by July 31, 2019;
- the reasons cited for ending the tenancy on the Notice to End Tenancy was that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- the rental unit has not been vacated.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant's guest deployed "pepper spray" in the residential complex on May 31, 2019. He stated that:

- an occupant of another unit in the residential complex (#311) was banging on the Tenant's door on that date;
- the Tenant and her guest would not open her door;
- shortly after leaving the rental unit the Tenant's guest knocked on the door of the other occupant's suite (#311);
- when the other occupant of #3113 opened his door the Tenant's guest sprayed him with "pepper spray";
- staff were cleaning on the floor at the time of the incident and were impacted by the "pepper spray"; and
- other occupants of the residential complex reported being impacted by the "pepper spray".

The Tenant stated that she learned about May 31, 2019 incident after it occurred.

The Landlord and the Tenant agree that the Tenant was served with a letter, dated June 05, 2019. In this letter the Tenant was informed that the person who deployed the "pepper spray" was no longer permitted on the residential property. The letter also

indicates that the Landlord would like to “continue to support your tenancy”.

The Tenant stated that she was told that her guest could not return to the residential complex and he has not been her guest since she learned he was barred. The Landlord does not know if the Tenant has provided this guest with access to the residential complex, although the guest has been seen outside the complex.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant was arguing loudly in suite #311 on March 22, 2019. He stated that:

- the argument was first reported at 1420 hours;
- the argument was reported again at 1450 hours;
- management attended after the report at 1450 hours and advised the Tenant and the other occupant to reduce the noise level; and
- no further noise was reported on that date.

The Tenant does not dispute the disturbance that occurred on March 22, 2019.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant allegedly assaulted the occupant of unit #311 on January 27, 2019. He stated that the police attended the residential complex to interview the occupant of unit #311, but that occupant did not wish to pursue criminal charges.

The Tenant stated that:

- on January 27, 2019 she was arguing in unit #311 with the occupant of that unit;
- the occupant asked her to leave the unit;
- the occupant did not think she was leaving quickly enough;
- the occupant pushed her out the door;
- she did not hit the occupant; and
- she accidentally knocked over his computer screen during the incident, causing it to break.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant was arguing loudly the rental unit on January 23, 2019. He stated that:

- at 0120 hours the Tenant contacted management for assistance;
- when the manager arrived on the fourth floor he could hear yelling from inside the rental unit;
- he observed another occupant of the fourth floor knocking on the door of the rental unit;
- the Tenant told the other occupant she wanted the occupant of unit #311 to leave her unit;
- when the occupant of unit #311 was leaving the unit he and the other occupant of the fourth floor became involved in a verbal argument;
- the manager contacted the police, but the parties dispersed prior to police arrival;

and

- other occupants from the fourth and fifth floors came out to the hallway as a result of the disturbance.

The Tenant does not dispute the disturbance that occurred on January 23, 2019. She stated that the argument with the occupant of unit #311 occurred because he would not leave her unit.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because the occupant of unit #311 was banging on the Tenant's door on June 28, 2019. He stated that:

- at 0005 hours the Tenant contacted the manager and asked him to come to her unit;
- when the manager arrived he found the occupant of unit #311 at the Tenant's door; and
- the occupant of unit #311 told the manager that he would not leave until the Tenant returned his personal property.

The Tenant stated that the occupant of unit #311 was at her door asking for the return of his game and that she did not open her door because the occupant seemed very "worked up".

The Landlord stated that the Landlord wishes to end the tenancy, in part, because a male with an aggressive dog has been loitering near the front of the residential complex on June 28, 2019 and would not leave at the request of management until police were contacted. He stated that:

- this male comes to the residential complex when the Tenant has a conflict with the occupant of unit #311;
- the Tenant was told this male is not permitted into the residential complex;
- the Tenant provided this male with access to the residential complex two or three days after June 28, 2019; and
- it is possible that this male signed into the entry log indicating he was visiting the Tenant without the Tenant actually providing the male with access to the complex.

The Tenant stated that:

- she was told that the male with the aggressive dog was not allowed in the residential complex;
- she did not invite this male into the residential complex after being informed her

was not allowed in the complex;

- the male told her that he signed into the building sometime shortly after June 28, 2019, using her name;
- the male told her that after signing into the building he went to her unit but she was not home;
- she has not seen this male in over a month;
- she has told the male not to contact her; and
- this male regularly comes to visit “Paul”, who lives on the second floor of the complex.

Analysis

Section 47(1)((d)(i) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

On the basis of the undisputed evidence I find that on May 31, 2019 the Tenant’s guest deployed “pepper spray” on the third floor of the residential complex, shortly after leaving the Tenant’s rental unit. On the basis of the undisputed evidence I find that a staff member was cleaning on the third floor of the rental unit and was impacted by the “pepper spray”, as were other occupants of the residential complex. I find that deploying “pepper spray” in a residential complex would typically give a landlord grounds to end a tenancy.

In these circumstances, however, the Landlord advised the Tenant that she was not permitted to allow the guest who had deployed the “pepper spray” into the residential complex. The Landlord provided this direction in a letter, dated June 05, 2019, in which the Landlord clearly informed the Tenant that the Landlord would like to “continue to support your tenancy”. As the Landlord informed the Tenant that the tenancy would continue regardless of this incident, I find that the Landlord does not have grounds to end the tenancy as a result of this incident, or on the basis of any other incident the Landlord was aware of that occurred prior to June 05, 2019.

On the basis of the undisputed evidence I find that the Tenant and an occupant of another suite in the residential complex have disturbed other occupants, by arguing loudly, on January 23, 2019 and March 22, 2019. As the letter dated June 05, 2019 informed the Tenant that the tenancy would continue, I find that the Landlord does not

have grounds to end the tenancy as a result of noise disturbances in January and March of 2019.

On the basis of the testimony of the Tenant I find that the Tenant and the occupant of unit #311 argued on January 27, 2019. As there is no evidence from the occupant of unit #311 that he was disturbed by the argument or that any other occupant of the residential complex was disturbed by the argument, I find that the Landlord does not have grounds to end this tenancy on the basis of this argument.

In spite of the letter dated June 05, 2019, I find that the Landlord would have grounds to end the tenancy as a result of any disturbance the Tenant or her guest causes after June 05, 2019.

On the basis of the undisputed evidence I find that the occupant of unit #311 caused a disturbance on June 28, 2019 by banging on the Tenant's door and refusing to leave. As the Tenant was not directly contributing to the disturbance; she provided a reasonable explanation for not opening her door; and the occupant of unit #311 was not her guest at the time of the disturbance, I cannot conclude that the Landlord has grounds to end this tenancy on the basis of this incident.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant provided the male with the aggressive dog access to the residential complex at any time after she was advised that he was not permitted in the complex. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates the Landlord's testimony that the Tenant provided this male with access to the residential complex after being informed he was not permitted in the complex or that refutes the Tenant's testimony that she has not provided this male with access after being informed he was not permitted in the complex. As the Landlord has failed to establish that the male with the dog was the Tenant's guest on, or after, June 28, 2019, I cannot conclude that the Landlord has grounds to end this tenancy on the basis of the Tenant's involvement with this male.

After considering all of the written and oral evidence, I find that the Landlord has failed to establish that the Landlord currently has the right to end this tenancy pursuant to section 47(1)((d)(i) of the *Act*. I therefore grant the Tenant's application to cancel the One Month Notice to End Tenancy for Cause that is the subject of this dispute.

The Tenant is cautioned that in spite of this decision the Landlord has the right to serve another One Month Notice to End Tenancy for Cause, should she be responsible for any further disturbances.

Conclusion

The One Month Notice to End Tenancy for Cause that is the subject of this dispute is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 26, 2019

Residential Tenancy Branch