



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ULTRA & DEMELO CONTRACTING
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, LRE, RP

Introduction

On July 4, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act"), seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*, seeking to set conditions on the Landlord's right to enter Section 70 of the *Act*, and seeking a repair Order pursuant to Section 62 of the *Act*.

The Tenant attended the hearing with D.D. and G.M. attending as advocates for the Tenant. J.F. attended as an agent for the Landlords, and both Landlords attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by hand on July 10, 2019 and J.F. acknowledged that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

J.F. advised that she served their evidence by posting it to the Tenant's door on August 16, 2019 and the Tenant confirmed that she received this evidence. As service of this evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's One Month Notice to End Tenancy for Cause, that her other claims would be dismissed, and that she is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2014 and rent is currently established at \$810.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$350.00. A copy of the written tenancy agreement was submitted as documentary evidence.

J.F. advised that the Notice was served to the Tenant by hand on June 25, 2019 and the Tenant confirmed that she received this. The reasons the Landlord served the Notice are because the “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” and due to a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The Notice indicated that the effective end date of the Notice was July 31, 2019.

J.F. referenced letters and emails submitted as documentary evidence from other tenants of the building and even neighbours of adjacent buildings complaining of disturbances from the rental unit, noise after hours, and noise from guests of the rental unit. She stated that a warning letter dated January 29, 2018, that was provided as documentary evidence, was served to the Tenant but she did not correct her behaviour.

She submitted that she had conversations with the Tenant about her behaviour and tried to work with her, but these efforts were unsuccessful. She advised that other tenants of the building have come to her to complain, and it was discovered that some of these tenants do not live in the rental unit on occasion because of the disruptiveness of the behaviours of the Tenant and her guests.

She advised that the police had been called numerous times about these issues caused by the Tenant, and she submitted that one tenant was threatened by a guest of the Tenant not to call the police about any issues. She also suspected that a guest of the Tenant had vandalized part of the common area of the building when removed by the police; however, she did not have any proof of this.

G.D. advised that he would conduct maintenance at the property and that other tenants would complain to him about noise issues coming from the rental unit. He stated that the tenant living below the Tenant would sleep elsewhere due to the significance of the disturbances. He also stated that the noise has become so considerable that he would receive complaints from neighbours across the street, some of whom have even called the police. He advised that this has been a long-term issue with the Tenant that has affected the quiet enjoyment of other tenants of the building.

S.D. advised that they have owned the building for two years and the behaviours of the Tenant and her guests show a tremendous amount of disrespect. She stated that other tenants have been threatened, that she has never had neighbours from adjacent buildings complain about their tenants before, and that the police have been called numerous times.

The Tenant advised that it is her belief that it appears as if the Landlords “coerced” the other tenants of the building to write complaint letters. She acknowledged receiving only the warning letter, that she corrected her behaviours, and that she has not been notified of any other issues or complaints. She stated that the police had never been called for any issues, but she contradictorily advised that the police were called on July 21, 2019 due to complaints of a party. However, she stated that she was sleeping and there was no disturbance. She suggested that the tenant below her has an issue with her and is the source of many complaints. She advised that she was never notified of any complaints and only realized there was an issue when she received copies of the complaint letters in the Landlords’ evidence. She stated that the rental unit is located in a popular area near the lake and there is a lot of general noise in that area in the summer.

G.D. advised that he went to the police to get file numbers for their attendance at the rental unit; however, he was not able to due to privacy issues. He did confirm though that the police had attended the rental unit multiple times. He stated that the totality of the evidence against the Tenant supports their position, on a balance of probabilities.

J.F. noted that the police attended the rental unit between June 10 – 11, 2019 and that a hole was present in the lobby wall after a guest of the Tenant had been forced to leave the building. However, there is no proof that this person did the damage. She stated that apart from the above incident, she has no evidence corroborating the time or dates of other police attendance.

With respect to the issue of a breach of a material term, J.F. advised that the covenant of quiet enjoyment was a material term under section 11 of the tenancy agreement and that this is expressly noted as a material term. Furthermore, she stated that her warning letter of January 29, 2018 advised the Tenant that this was a material term, that this notified the Tenant that she had breached this material term, and that the Tenant had not corrected her behaviour after being served this written warning to do so.

S.D. added that the Notice was served because of issues already discussed relating to the first reason on the Notice. She advised that a number of tenants in the building are home a lot and they are keenly aware of what happens in the building and the comings and goings of visitors.

G.D. also advised that he gets statements from other tenants about their concerns; however, it does not appear that any of these complaints were submitted as documentary evidence. He stated that other tenants feel threatened and cannot or will not report any issues because they are fearful and concerned for their safety. The Tenant did not have any submissions with respect to this reason on the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or**
- (h) the tenant
 - (i) has failed to comply with a material term, and*
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;**

Furthermore, Policy Guideline # 8 outlines a material term as follows:

“A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.”

As well, this policy guideline states that “To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”

Regarding the validity of the reasons indicated on the Notice, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. With respect to the first reason on the Notice, the Landlords provided some evidence to support their

position that the Tenant or her guests have engaged in behaviours that have been disrupting the other tenants' covenant of quiet enjoyment. While the Tenant has provided mostly contradictory testimony, I do not find that simple denials of the witness statements and evidence provided outweighs the preponderance of the Landlords' evidence, on a balance of probabilities. As such, I am satisfied that the allegations against the Tenant are more persuasive and more likely than not credible. However, I do not find that the Landlords have provided any evidence to support that the Tenant's disruptive behaviour would constitute "illegal activity" that would justify service of the Notice under this reason. As such, I am not satisfied that the Landlords have properly substantiated the grounds for ending the tenancy on this point.

With respect to the reason on the Notice of a breach of a material term, while it is the Landlords' position that their submissions on the Tenant's actions and behaviours would constitute a breach of a material term of the tenancy agreement, I find it important to note that the term in the tenancy agreement that J.F. relies on and considers to be a material term is already a provision within the *Act* that entitles tenants to quiet enjoyment. As well, given that the most trivial breach of a material term would warrant an end to the tenancy, I do not find that it makes sense then that if the Landlords believed that the Tenant's actions were truly a breach of a material term of the tenancy, that the Notice would be served after multiple "breaches", as opposed to the first "breach". Furthermore, I do not find that this term in the tenancy agreement is clearly stated to be a material term of the tenancy.

When reviewing the totality of the evidence before me, I am not satisfied that the Landlords have substantiated that what they are relying on as a material term of the tenancy would meet the definition of a material term. As such, I am not satisfied that the Tenant's actions, while potentially worthy of a different reason on the Notice, would constitute a breach of a material term of the tenancy nor would they be justification to warrant the Notice being issued under the reason of a breach of a material term.

Any of the aforementioned disruptions by the Tenant are actions or behaviours that, if committed by any tenant of a rental property, would likely give rise to a Landlord serving a One Month Notice to End Tenancy for Cause. The Tenant is on formal notice that this pattern of demonstrated behaviour is unacceptable, inappropriate, and may have jeopardized her tenancy.

Regardless, as I am not satisfied that the Landlords have properly substantiated the grounds for ending the tenancy under the reasons that the Tenant engaged in "illegal activity" or that she has "breach(ed) a material term of the tenancy agreement", I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of June 25, 2019 to be cancelled and of no force or effect.

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: September 3, 2019

Residential Tenancy Branch