



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The tenant attended the hearing. The landlord was represented by its Program Manager ("**MO**"), who was assisted by the landlord's Portfolio Manager ("**SI**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Evidence

The tenant provided a copy of a written statement to the Residential Tenancy Branch ("**RTB**") on September 24, 2019 and a copy of a bank statement on August 6, 2019. He provided no other evidence in support of his application. He testified that he did not serve either of these documents on the landlord.

Rule of Procedure 2.5 and 3.14 require that an applicant serve a respondent with copies of any evidence they are relying in advance of the hearing. I find that the tenant has failed to do this. As such, I exclude all documentary evidence the tenant has provided the RTB from this application, as it would be unfair for me to consider any evidence when making my decision that the landlord has not had an opportunity to review in advance of the hearing.

MO testified that her predecessor sent the landlord's evidence to the tenant via registered mail. The tenant denied ever receiving the landlord's evidence. MO was unable to provide a Canada Post Tracking Number to confirm that the landlord's evidence was sent.

Rule of Procedure 3.16 states:

3.16 Respondent's proof of service

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

I find that the landlord is unable to demonstrate that the tenant was served with its documentary evidence. It is the landlord's responsibility to keep records which would to prove such service. In this case, the landlord did not.

I am not satisfied that the tenant was served with the landlord's evidence, as required by Rule of Procedure 3.15. As such, I exclude all documentary evidence the landlord has provided the RTB from this application, except for the Notice (which the tenant acknowledged receiving at the time it was issued).

The parties proceeded with the application relying only on oral evidence and the Notice

Issue(s) to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice; and
- 2) an order that the landlord comply with the Act.

Background and Evidence

While I have considered the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that, pursuant to the written tenancy agreement, the tenant pays \$375.00 in monthly rent. The landlord collected a security deposit from the tenant of \$187.50, which it continues to retain.

The parties agree that, on July 20, 2019, two men and one woman (the “**Non-Residents**”) perpetrated a robbery of a rental unit located on the same floor as the tenant’s rental unit (the “**Neighbour Unit**”).

The parties agree that the tenant was not one of Non-Residents.

MO testified that the tenant allowed the Non-Residents into the residential property at 1:23 am. She testified that the Non-Residents did not sign in at the residential property front desk, despite being asked to by the front desk employee. She testified that this employee asked the tenant to have the Non-Residents produce ID, but that the tenant refused.

MO testified that the Non-Residents and the tenant went to the rental unit and, approximately 11 hours later (at 12:23 PM), emerged wearing face masks and forced their way into the Neighbour Unit. MO testified that the male Non-Residents robbed the occupant at gun point and sprayed her with bear spray. She testified that the female Non-Resident stayed outside the Neighbour Unit to keep watch during the robbery.

MO testified that after the robbery the Non-Residents returned to the rental unit, the front door of which was opened for them from inside.

MO argued that the tenant had knowledge of the robbery and permitted the Non-Residents to enter the residential property for the purpose of committing the robbery. MO argued that the tenant “obviously received a cut” of the proceeds of the robbery. She testified that she based this belief on the facts that the tenant permitted the Non-Residents entry to the residential property and permitted them to use the rental unit as a staging area for the robbery and as a place to remove their disguises following the robbery.

On this basis, the landlord prepared and served the Notice on the tenant on July 26, 2019 by posting it on the rental unit door. The tenant confirmed receipt of the Notice. The Notice had an effective date of August 27, 2019.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - o damage the landlord’s property;
 - o 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 tenant disputed the Notice at the RTB on August 1, 2019, five days after it was posted on his door.

The tenant testified that the female Non-Resident was a former resident of the residential property whom he knew, and she and the two other Non-Residents came to the rental unit on July 20, 2019 around 1:30 am to do drugs.

The tenant testified that they took drugs between 1:30 am and 7:30 am, at which time he left the rental unit to go to his methadone clinic. He testified that he allowed the Non-Residents to stay in the rental unit and instructed them to leave when they were ready. He did not leave them a key, he testified, as the rental unit door automatically locked up exit.

The tenant testified that he returned to the rental unit around 10:00 am, at which time he learned of the robbery. He denied knowing that the Non-Residents were going to rob the Neighbour Unit.

During his submissions, the tenant stated that his application for an order that the landlord comply with the Act was, in fact, an extension of his application to set aside the Notice, and that there was not any specific portion of the Act that he wanted the landlord to comply with. He seeks only to have the Notice cancelled.

The landlord also argued that the tenant breached several of rules of the tenancy, which were included as an addendum to the tenancy agreement:

- 1) giving his key to a guest;
- 2) having visitors outside the hours of 9am and 11pm; and
- 3) having visitors who refuse to check in at the office with a valid ID.

I note that none of these breaches were referenced on the Notice.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, I find that the landlord bears the onus to prove that the Notice was issued for a valid reason.

I find that the Notice was validly served on the tenant. The Notice refers only to occurrences of illegal behavior by the tenant or persons the tenant allowed onto the residential property as the basis for ending the tenancy. As such, I find that any action taken by the tenant which may have breached the rules of the tenancy included in an addendum to the tenancy agreement not to be a valid basis for ending the tenancy. These alleged breaches were not the reason the Notice was issued. I can only consider the reasons included on the Notice when deciding whether to uphold the Notice.

Policy Guideline 32 discussed the basis of illegal activities for ending a tenancy. It states:

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 would justify termination of the tenancy.

As such, the tenant's admission that he and the Non-Residents did drugs between 1:30 am and 7:30 am is not sufficient to meet the standard of illegal activity necessary to end

the tenancy. There is no evidence before me that the drug use had a “significant impact on other occupants or the landlord's property”.

However, a robbery of a neighboring unit may be sufficiently serious as to warrant ending the tenancy.

Policy Guideline 32 continues:

If a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity. The tenant may be found responsible for the illegal activity whether or not the tenant was actually present when the activity occurred, so long as it was in the rental unit or on the residential property. For example, the tenant may know that his or her guest has been arrested for breaking and entering. The guest breaks into the rental unit of another tenant. This may constitute grounds for ending the tenancy for illegal activity. A further example may be where a tenant allows a teenage child of the tenant to have a party in the rental unit or on the residential property while the tenant is away and one of the party guests commits an illegal act in circumstances where supervision would be found to be warranted and where the tenant knew or ought to have known that such an illegal act could occur in the circumstances (underage drinking, use of drugs, presence of a weapon).

The test of knowledge attributable to the tenant is the "reasonable person" test. If a reasonable person would be expected to know or ought to know that illegal activity might occur, the tenant will be responsible whether or not the tenant actually possessed this knowledge. In other words, willful or inadvertent blindness to the possibility will not save the tenant from the consequences of the guest's illegal activity.

The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities

Based on the evidence before me, I find that the landlord has failed to discharge its evidentiary burden to prove that the tenant knew or ought to have known that the Non-Residents intended to rob the Neighbour Unit. MO's testimony and the tenant's testimony conflict.

MO testified that the tenant was in the rental unit during the robbery, so he must have known that the Non-Residents were going to rob the Neighbour Unit, as he would have seen them put on masks before they left the rental unit.

The tenant testified that he left the rental unit before the Non-Residents robbed the Neighbour Unit, and that he had no knowledge that they intended to do so.

There is no evidence in the record which would assist me in determining whether the tenant left the rental unit before the robbery as he claims. In the absence of such evidence, I find that the landlord has not met its evidentiary burden to prove that he did.

I accept the tenant's evidence that he did not know of the Non-Residents' intentions to rob the Neighbour Unit. The landlord presented no evidence that the tenant had any actual knowledge of the Non-Resident's intention to rob the Neighbour Unit.

Additionally, I find that the evidence of the parties does not support an inference that the tenant ought to have known that the Non-Residents intended on robbing the Neighbour Unit.

The length of time between the Non-Residents entering the residential property (1:23 am) and the robbery taking place (either between 8:30 am and 10:00 am, per the tenant or 12:23 pm, per MO), suggests that that the purpose of the Non-Residents' visit was for more than just the robbery. MO gave no explanation for the long gap between the Non-Residents' entering the rental unit and the robbery.

I accept the tenant's evidence that he and the Non-Residents consumed drugs through the night. As such, I find that a reasonable person would not have known that the true purpose of the Non-Residents' visit was to rob the Neighbour Unit. I find that it was not unreasonable to think that the purpose of the Non-Residents' visit was to consume drugs with the tenant. Given that the tenant knew the female Non-Resident, I do not find it unreasonable that he would have left the Non-Residents in the rental unit unattended while he went to the methadone clinic.

As such, I do not find that the tenant knew or ought to have known that the Non-Residents intended to rob the Neighbour Unit. Therefore, I find that the tenant's conduct does not rise to the level necessary to issue a One Month Notice to End Tenancy for Illegal Activities, as set out in Policy Guideline 32.

I find that the landlord has failed to discharge their evidentiary burden to prove that the Notice was issued for valid reasons. As such, I order that the Notice is set aside and of no force and effect. The tenancy will continue.

Conclusion

I grant the tenant's application that 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: October 1, 2019

Residential Tenancy Branch