



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLACKFOREST MOTEL and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47.

Both the tenant and the landlord attended the hearing. The landlord was represented by resident manager, PB ("landlord"). The landlord acknowledges receiving the tenant's Application for Dispute Resolution Proceedings Package and evidence and indicated he has no issue with timely service. The tenant acknowledges receiving a CD containing video clips and the landlord's documentary evidence. Based on the testimonies, I am satisfied each party was served with their respective material in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue

The tenant disputed the dates the video clips were made, saying they were recorded after the Notice was issued. The landlord advised he was OK with not using the video evidence. This evidence was not considered for the hearing.

Issue(s) to be Decided

Should the Notice be upheld or cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The month to month tenancy began on June 1, 2018 with rent set at \$750.00 payable on the first day of the month. A security deposit of \$100.00 was collected by landlord which the landlord continues to hold. No pet damage deposit was required a no condition inspection report was conducted at commencement of the tenancy.

The landlord testified that during the tenancy, the tenant has been continuously noisy, drinking, playing loud music, using vulgar language and tells neighbours off. There have been complaints made about the tenant by other occupants of the building however the names of the complainants were not provided as the landlord advised they were afraid of the tenant. None of the complainants were called as witnesses.

The landlord provided 3 notices given to the tenant. The first notice, dated June 19, 2018 indicated the tenant had removed a smoke detector. The second notice, dated June 18, 2019 refers to a complaint made due to noise and fowl (sic) language last night. A warning it may end the tenancy was included in this notice.

The third notice, dated July 25, 2019 appears to be the landlord's recollection of events that took place on that day. It refers to the landlord telling the tenant to 'shut the noise down' and the tenant's subsequent response of coming down to speak to him, swearing at him, singing and calling the landlord's phone later that night. No warnings or directions to the tenant were given on this notice.

No other specific incidences of the tenant disturbing other occupants of the building were presented as evidence. The landlord testified the tenant is habitually out on the balcony until after dark making noise with his friends, however the landlord did not provide dates or times of the incidences or record of complaints.

On August 1, 2019, the landlord served the tenant with a One Month Notice to End Tenancy for Cause ("Notice") by posting it to the tenant's door. The tenant acknowledges receiving it on August 1st. The reasons stated on the Notice was:

...adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

Nothing is indicated on the lower portion of the form, details of cause. Noted on the form is the following prescribed instructions:

Include any dates, times, people or other information that says who, what, where and when caused the issue. The Residential Tenancy Branch may

cancel the notice if details are not described. Attach separate sheets if necessary.

The landlord testified the lower portion of the form was left blank because he didn't feel he needed to complete it. He and the co-landlord felt all they needed to do was to 'tick off the box for noise'. The form was already 'ticked off' as to what it is about.

The landlord provided a further notice dated August 6, 2019, however this was given to the tenant after the One Month Notice was issued.

The tenant testified that everybody in the building can hear one another, especially when outside on the balcony. From his unit on the second floor, he can hear conversations from the lower tenants as well as the resident managers who are directly below him. He has a cooking background and has other tenants in the building join him for barbecues and acknowledges they make noise but quiet down when told to by the landlord.

The reason he was given the Notice was because the landlord has a 'vendetta' against him for speaking out. There was vandalism done to the landlord's vehicle and on the night of July 25th when the landlord wanted to catch the culprit, the tenant's presence on the balcony hindered it. The tenant acknowledges receiving the Notice on August 1, 2019 and filed for dispute resolution on August 9, 2019,.

Analysis

As the tenant has acknowledged receiving the Notice that was posted to the door on August 1, 2019 in accordance with section 88 of the *Act*, I find that the tenant was duly served with the Notice on that date.

Section 47 of the *Act* provides that upon receipt of a Notice to end tenancy for cause, the tenant may, within ten days, dispute the Notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the Notice in accordance with Rule 6.6 of the Residential Tenancy Branch Rules of Procedure.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. Here, the landlord must demonstrate that the tenant has done any or all of the following:

... adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

In this case, the reasons stated on the Notice is only part of section 47(1)(e)(ii) which reads:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

the tenant or a person permitted on the residential property by the tenant **has engaged in illegal activity** that 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. (emphasis added)

It is unknown whether the omission of the first part of section 47(1)(e)(ii) was intentional or not on the part of the landlord.

The illegal activity component of section 47 is defined in Residential Tenancy Branch policy Guideline PG-32 [Illegal Activities].

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an *Act* prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

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.

Section 47 allows a landlord to seek an end to tenancy for other reasons, however the one chosen by the landlord is 47(1)(e)(ii) which means the illegality of the tenant's

conduct must be proven. In this case, the landlord has not provided any evidence of illegal activity. While being continuously noisy, drinking, playing loud music, using vulgar language and tells neighbours off may be an annoyance, the landlord has not successfully shown that on a balance of probabilities the behaviour is against the law. The illegality of the tenant's action is a requirement of the landlord's burden to prove his case.

Secondly, the landlord has chosen not to complete the 'details of cause' listed on the Notice. This section of the form advises the applicant/landlord that the Residential Tenancy Branch may cancel the notice if details are not described. The landlord's position that the tenant was 'well aware' of the reasons for issuing the notice is not sufficient for a dispute resolution proceeding. In order to fully answer and defend a Notice to End Tenancy for Cause, the tenant must be supplied with the landlord's reasons for issuing the Notice. In this hearing the tenant directed his testimony to the landlord's perception of preventing from catching the vandal who vandalized the landlord's vehicle while the landlord testified noise and belligerence was the main concern. I am not satisfied the tenant understood the landlord's reasons for issuing the Notice.

As the landlord has not proven the actions of the tenant were illegal and because the Notice did not provide adequate reasons for ending the tenancy, I dismiss the landlord's One Month Notice to End Tenancy issued on August 1, 2019.

Conclusion

I order that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the *Act*.

This decision is final and binding on the parties.

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 13, 2019

Residential Tenancy Branch