Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC FFT (TENANT); OPC (LANDLORD)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause (One Month Notice") pursuant to sections 47 and 55;

The hearing was conducted by teleconference. Both parties attended the hearing and provided affirmed testimony. The hearing process was explained, and both parties had to opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the *Act*.

At the outset, the landlord corrected the landlord's name in the proceedings to the corporate name indicated on the cover page. The parties agreed to the amendment. I accordingly order the landlord's name is amended in the proceedings.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Is the landlord entitled to the following:

- An order for possession under a One Month Notice to End Tenancy for Cause (One Month Notice") pursuant to sections 47 and 55;

Background and Evidence

The parties agreed that the tenancy began on July 1, 2009 for a fixed term of one year. Since then, the tenancy has continued on a month to month basis and is ongoing. The tenant provided a security deposit at the beginning of the tenancy in the amount of $545.00 which the landlord holds. A copy of the lease was submitted as evidence. The rent is $1,435.00 payable on the first of the month.

The heading of the lease is "Commercial Lease". The parties agreed that the tenancy at the beginning was for artists' live/work studios (as set out in section 16), but the unit has from the early part of the tenancy been residential and not commercial. No business is carried on in the unit. The parties agreed the Act governs the relationship between the parties and the RTB has jurisdiction over this matter.

The lease contains a prohibition against subletting in section 17 without the prior consent of the landlord. The section stated [as written]:

> *17. Assign or Sublet – Leasee shall not assign or sublet the premises without the prior consent of the Landlord. If the Commercial Lease agreement is for a term of six months or more, such consent shall not be arbitrarily or unreasonably withheld by the landlord. Any assignment or subletting of the premises by the Leasee shall in no way release the Leasee from his covenants and obligations in the agreement and he shall continue to be primarily liable under the Commercial Lease.*

The parties agreed that the tenant resided in the unit with the witness CA until about 6 years ago when the tenant moved out of the unit to another apartment in the same building where she still resides. The witness CA has resided alone in the unit ever since. The landlord acknowledged that he has been aware of this for the full period of six years and accepts rent from CA.

The landlord issued a One Month Notice dated September 4, 2019 and served it upon the tenant by posting to the door of the unit that day. The tenant acknowledged service although she had not lived in the unit for many years. The tenant filed a dispute application on September 12, 2019 within the ten day period.

The selected reasons for the issuance of the Notice are as follows:

1. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
3. Tenant has assigned or sublet the rental/unit/site without landlord's written consent
4. Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord's reasons for each ground and the tenant's and CA's response follow. The first two grounds are considered together.

1. *Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and*
2. *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park*

The landlord claims that CA is a "hoarder" and that the hoarding puts the unit and the building at health and safety risk. The landlord asserts that there is blocked access to the unit and first responders "would not be able to get in".

In support of this contention, the landlord relied upon the testimony of the witness EW. EW, agent for the landlord, testified as follows. There had been no previous inspections of the unit until August 22, 2019. On that date, after issuance of a proper notice under the Act, EW went to the unit for the purposes of an inspection. CA opened the door and EW took a few steps into the unit but proceeded no further. EW stated that there was

“no walking room”, a “mismatch” of items and boxes were “piled floor to ceiling”, there was a “little path” among the items, and the bathroom was inaccessible.

The agent TH testified he has not notified the fire department, the landlord’s insurer, or the city regarding the landlord’s alleged health fears, safety concerns, or other risks. The reason is that he had been informed this was a residential tenancy matter.

No pictures were submitted or supporting documentary evidence to support the testimony of EW as to the condition of the unit.

No warning was issued. On August 28, 2019, the landlord issued a written notice to the tenant that eviction proceedings would be started. A copy of the notification letter was submitted.

In reply, the tenant denied that denied that the property was at significant risk as alleged by the landlord in the Notice and testimony. The tenant stated that she was in the unit “a few months ago”. She testified that the unit contained “a lot of stuff” as CA had moved things from storage which was becoming increasingly expensive. She denied that CA was a hoarder or that the unit was a health or safety risk.

CA was called as a witness to support the assertions of the tenant. CA testified that, contrary to the landlord’s evidence, the “place is accessible”, there is “no floor to ceiling stuff”, the unit is “habitable”, there are no vermin/pests, the bathroom is functional and accessible, and the unit was inspected for sprinkler and fire prevention two months before EW’s attendance. Neither the tenant nor CA uploaded photographs of the unit.

The landlord testified the landlord had many complaints about the tenant and CA resulting in an allegation that they both caused significant risk to the property agents and to occupants of the building, as follows.

With respect to the tenant, the agent TW said she “showed no responsibility or accountability”. Regarding CA, TW testified he was “concerned for my safety” and “uncomfortable” around CA. TW said the CA wears his “pants half down”, that other tenants “must feel safe and secure” and do not because of CA’s behaviour, and that “no resident manager should be subjected to CA’s behaviour.”

With respect to CA’s alleged behaviour, the agent CH stated that on one occasion CA yelled profanities at him in the hallway and was “in his personal space”. CH also said that on an unspecified date, CA put the unit and occupants at risk by having a “drug

addled friend" visit who behaved improperly and disrespectfully. The landlord testified that the managers of the building had received many complaints about CA, but the landlord did not submit the alleged complaints as evidence.

The tenant and CA submitted several letters from occupants of the building testifying that CA was a good tenant.

With respect to the allegation of "extraordinary damage" done by the tenant to the unit, the landlord expressed concern that the tenant had damaged the unit and that the bathroom may not be functioning. The landlord provided no supporting evidence for this fear. The witness EW did not testify to any such damage. The landlord speculated that beneath the items in the unit could possibly be extensive and dangerous damage.

The tenant and CA denied that there was any extraordinary damage to the unit and invited the landlord to schedule a full inspection. The tenant said the bathroom in the unit is functioning.

3. Tenant has assigned or sublet the rental/unit/site without landlord's written consent

The parties agreed that the occupant of the unit, CA, has lived alone in the unit for about 6 years, the unit having been sub-let to him by the tenant without the permission of the landlord.

The tenant claimed that CA has lived there for years without any protest or complaint by the landlord until now.

CA testified that he has done work for the landlord such as in the area of refuse removal and that his relationship was fine with the landlord until recently.

4. Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

CA acknowledged he lives in the unit with a pet. The landlord acknowledged the landlord has not requested a pet deposit.

Analysis

The parties' testimony and evidence was contradictory and the hearing was 85 minutes. Not all evidence will be referenced. Reference will only be made to key portions of the

evidence.

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, on a balance of probabilities, the grounds for the One Month Notice.

Pursuant to section 88 of the *Act*, and based on the submissions of both parties, the tenant was served with the One Month Notice on September 7, 2019 and brought this application within the ten-day period.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the One Month Notice.

Firstly, in the matter at hand, the landlord must demonstrate that the tenant has done the following:

1. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

I find the landlord has not met the burden of proof on a balance of probabilities that the condition of the unit is "hoarding" as claimed or that the condition of the unit amounts to putting the property at significant risk. I found the tenant's testimony supported by CA's testimony to cast doubt on the agent EW's evidence which was unsupported by documentary evidence. I also find EW's evidence vague and insufficiently detailed to warrant much weight.

As well, I find there is insufficient evidence of any warning letters sent by the landlord to the tenant regarding any perceived hoarding or health/safety risk. The landlord did not support supporting documentary evidence such as inspection reports with attached photographs.

I also find the landlord has not established that there is extraordinary damage to the unit. I acknowledge that the landlord is concerned about damage and that the landlord believed the prudent course may be to conduct an inspection. However, I find that mere

suspicions on the landlord's part does not meet the burden of proof on a balance of probabilities with respect to this aspect of the landlord's claim.

With respect to the third claim in the Notice, the parties agreed that about six years ago, the tenant sublet the unit without the landlord's consent to CA. The parties also agree that the landlord was informed of the sublet for six years and has submitted no documentary evidence of informing either the tenant or CA that the landlord objects to the tenancy. The landlord has accepted rent directly from CA. CA has performed work for the landlord for which he has been paid.

I find that the legal principle of estoppel applies to this situation. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

I find the landlord established a pattern of accepting rent from CA and acknowledging that CA was the de facto tenant of the unit. I find the tenant and CA relied on this pattern and CA has lived there without notice of objection from the landlord for six years. I find the landlord is estopped from now claiming that the tenant sublet the unit to CA without authorization and in violation of the lease.

The parties agreed that CA lives in the unit with a pet and has done so for some time. Once again, I find the doctrine of estoppel to apply. The landlord cannot now claim that the tenant or CA is in violation of the agreement after having accepted the situation without complaint for so long. As well, the landlord submitted no evidence of requesting a pet deposit until the issuance of the Notice.

In conclusion, with respect to all the claims in the Notice, I find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to any aspect of the claim.

I therefore find the tenant's application succeeds and the Notice is set aside and of no effect. The tenancy will continue until it is ended in accordance with the agreement and the Act.

As the tenant has been successful in the tenant's claim, she is granted reimbursement

of the filing fee in the amount of $100.00 which the tenant may deduct from rent on a one-time basis only.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is granted, and the One Month 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 25, 2019

Residential Tenancy Branch