



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated and received August 12, 2019. He also requests a compliance order against the landlord for an unspecified purpose.

The Notice in question claims a variety of grounds:

That the tenant the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

That the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (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
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

And that the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

Any of these claims, if proved, is a lawful reason for a landlord to end a tenancy under s. 47 of the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the evidence show that the tenant has caused the violation of any of the stated grounds in the Notice?

Background and Evidence

The rental unit is a two bedroom “plus den” suite; one of four suites in one of two twin buildings rented by the landlord. The tenancy started in 2001. The parties agree there is a written tenancy agreement but neither had one readily available. The current monthly rent is \$1285.00. The landlord holds a \$425.00 security deposit.

The “Details of Dispute” portion of the Notice reads:

Several complaints from neighbours. Loud, late parties. Cigarette & marijuana smoke. Clutter on property. Illegal tattooing on property. Allowing P. N.[*name redacted*] on property who has excessively damaged and stolen from property.

The landlord testifies that tenants in the building and the next building are fearful of the tenant and his guests, who stay and party until 3:00 a.m. She says there are 11 children living in rental units in the two buildings and they need to be protected from the tenant and his friends and their activities.

She says the tenant ran a tattoo business from this rental unit that was closed down by the local government some years ago but she thinks he is still doing it.

She is concerned that he has invited a former tenant onto the property, Mr. P.N. The landlord evicted Mr. P.N. some time ago for illegally growing marijuana and he owes her in excess of \$14,000.00 for damage to the premises.

Another tenant, J. complained about smoke and sent her pictures of the tenants guests outside in the yard on the property.

Her major issues as she described them are 1) that the tenant is running a tattoo parlor and if he injures someone she would be liable, and 2) he is letting strangers onto the property.

In response the tenant testifies that he is not carrying on a commercial tattooing business in the rental unit. He still has an old barber's chair that he used in the business and he still tattoos friends occasionally.

He produces letters for four tenants in the building including someone likely living with the tenant J. who sent her pictures. The letters indicate that the other tenants have no problem with this tenant and consider him a good tenant. A fifth letter is from the tenant's former neighbour and also indicates that this tenant was a good neighbour

Analysis

The ending of a tenancy is a very serious matter. The initial burden is on the landlord to show good cause. While the evidentiary test is on a "balance of probabilities," because of the serious result, a landlord will be required to provide clear and direct evidence of cause.

The landlord has failed to provide evidence sufficient to show good cause for eviction in this case.

In regard to tattooing, there is no evidence that the tenant is carrying on a tattoo business in his suite. The landlord is worried about her liability but has failed to show any basis whereupon she could be liable for harm caused by this tenant in applying a tattoo to someone at this rental unit.

The landlord has failed to show that other tenants are being disturbed to such a significant extent as to warrant an eviction. The landlord's second hand evidence about

what she believes other tenants are experiencing is not the direct evidence that is required in matters of this type. The only evidence that appears to be direct evidence is that of J. who appears to complain about smoke coming from the tenant's guests in the yard. There is no evidence that prior to the issuance of this Notice the tenant was told of the complaint or that smoking in the yard was creating a problem or that it should stop.

When balanced against the written statements of other long time tenants in the building the landlord has failed to show that the tenant or a person permitted on the property by him has conducted themselves in a manner warranting the ending of this tenancy.

Conclusion

The tenant's application is allowed. The Notice is cancelled.

It should be noted that this decision only deals with tenant conduct up to the August 12, 2019 date of the Notice. Any conduct after that may form the basis for another Notice.

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 15, 2019

Residential Tenancy Branch