



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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.

Both parties attended. The landlord’s spouse, PT, attended with the landlord and provided testimony. The hearing process was explained, and an opportunity was given to ask questions about the process. Each party acknowledged receipt of the other party's evidence; each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the tenant served the landlord in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47.

Background and Evidence

The parties entered into a tenancy agreement dated December 31, 2015 for a unit in the landlord’s home. The landlord and his wife lived below the tenant. The tenant paid rent of \$1,200.00 monthly on the last day of the month. At the beginning of the tenancy, the tenant paid a security deposit of \$300.00 which the landlord holds.

On September 30, 2019, the landlord personally served the tenant with the One Month Notice with an effective date of November 1, 2019. The tenant acknowledged service and filed a dispute within ten days. The grounds set out in the Notice are:

1. Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property.
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
4. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The two main assertions by the landlord in support of the Notice are as follows:

- The tenant has unknown persons staying with her from time to time causing the landlord to fear for his 'safety and security'; the tenant rents out a room and the landlord does not always know who is staying there.
- The tenant caused water damage affecting the landlord's apartment below the unit.

With respect to the first assertion, the parties agreed that the landlord allowed the tenant to have a roommate who would rent one of the bedrooms in the unit. The landlord acknowledged this arrangement but testified that he did not always know who was living in the unit. While the roommates were sometimes introduced to the landlord, on occasion a new roommate would "show up"; the landlord and his wife found this upsetting and disturbing. They also said that an unknown vehicle would sometimes be parked at the house indicating that someone they did not know was staying in the unit. The landlord testified he observed a 'strange man' trying to get into the unit.

The landlord stated that the police had been to the unit on several occasions, most recently because of a cell phone reported missing.

The landlord claimed he and his wife were “significantly interfered with or unreasonably disturbed” and the cumulative situation “put the landlord’s property at significant risk”.

In response, the tenant stated that she was unable to afford the rent without having a roommate; as a result, the parties agreed she could rent out a room to make the unit affordable. She denied that she sublets the unit and stated she has always lived there while personally paying the rent.

The tenant acknowledged that her large extended family and friends may visit from time to time but that she was a respectful and orderly tenant who had lived in the unit for four years without major recent problems. The tenant testified that any unknown vehicle parked at the house belonged to occupants of the unit or was loaned to a roommate.

The tenant acknowledged that early in the tenancy, she consumed alcohol and that the police attended at the unit a few times. However, the tenant testified that she has been sober for over three years and all such incidents had ceased.

The tenant explained that the recent visit by the police relating to the missing cell phone was not related to poor behaviour on her part. She denied that unauthorized people were in the unit or that the landlord had any need to fear for his safety and security.

With respect to the second assertion, the parties agreed that water from the unit damaged the landlord’s unit in August 2019 causing the landlord to incur damage to flooring in his unit. The landlord stated that the tenant had caused the incident was probably caused by the tenant plugging a drain.

The landlord further stated that the washing machine appeared to have been broken by the tenant and was discovered after the water damage incident. The landlord did not submit any supporting evidence, such as a plumber’s or repair report, in support of either assertion.

The landlord claimed that the tenant thereby “caused extraordinary damage” to the unit.

The tenant denied that she was responsible for the flooding and believed that the incident was probably caused by the toilet plumbing in the unit with which there had been previous issues. She also denied responsibility for the non-functioning washing machine and stated she had only used it for normal use.

The landlord alleged other issues, a totality of which he asserted amount to adequate cause to end the tenancy. For example, he testified that he observed a person who appeared to be a minor using prohibited drugs in the unit. However, the tenant stated that the incident occurred early in the tenancy and no such incident had occurred for several years.

The landlord also testified that the toilet in the unit was plugged with a spoon some days prior to the above flooding event and stated that the tenant was responsible. The tenant acknowledged that the toilet clogged but denied that she was in any way to blame. Further, she testified that the landlord told her after he repaired the toilet that she was not at fault and things like that happen to everyone.

The tenant stated she was puzzled about why the landlord wanted her out of the unit. She stated that there had been no warnings, no written notice, and no significant issues. For several years, the relationship appeared to her to be “fine”.

Analysis

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 30, 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:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

- put the landlord's property at significant risk.
- 2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property.
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- 3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- 4. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

With respect to the first ground claimed, I find the tenant has not significantly interfered with or unreasonably disturbed another occupant or the landlord or put the landlord's property at significant risk. While the parties agreed that there were incidents early in the tenancy which disturbed the landlord, I accept the tenant's testimony, unchallenged by the landlord in any credible detail, that the recent years of the tenancy have been largely uneventful except for the water damage which I will address. I found the evidence of the landlord and his wife to be vague and lacking in enough details to establish a basis for ending the tenancy under this section.

The second ground applies only if there has been "illegal activity". The landlord has not claimed that the tenant engaged in any illegal activity and accordingly I find the landlord has failed to meet the burden of proof with respect to this aspect of his claim.

The third ground is that the tenant or one of her guests/roommates caused "extraordinary damage". The parties disagreed on the cause of the water damage.

The tenant denied responsibility for the water damage. The landlord was not convincing that the tenant caused the overflow. The landlord was not certain where the water came from and "thought" it was from the shower. Unfortunately, the landlord did not submit any documentary evidence in support of his assertion that that tenant caused the water damage. I find the landlord has not provided a plausible reason for the water incident and has completely failed to establish that the tenant was in any way responsible. Accordingly, I find the landlord has failed to meet the burden of proof with respect to this aspect of the claim.

The final ground is that the tenant assigned or sublet the unit without the landlord's written permission. I find the tenant has always lived in the unit and has never assigned

or sublet the unit. I find the landlord has confused the concept of “having a roommate” with subletting.

I further find that the tenant was permitted to have roommates. I accept the tenant’s evidence that the landlord agreed she could have roommates and had done so throughout the tenancy in order to afford the rent. Indeed, the landlord acknowledged this agreement. The landlord accepted rent from the tenant and has not objected to her roommates in the years of the tenancy. While it is unfortunate that the landlord and his wife did not always know the roommate, the tenant had no obligation to introduce any co-occupant.

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 the tenant knowing that she had roommates. There is no “sole occupancy” condition in the agreement. Having a roommate is not the same as subletting. I find the tenant has lived there without notice of objection from the landlord for four years. I find the landlord is estopped from now claiming that the tenant did not have permission to occupy the unit with another person.

I find the landlord has not met the burden of proof on a balance of probabilities with respect to any of the grounds claimed and I dismiss the landlord’s claim without leave to reapply.

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 tenant's application is granted and the Notice to End Tenancy is vacated and of no force and 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: November 20, 2019

Residential Tenancy Branch