



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sanford Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

Background and Evidence

The following are agreed facts: The tenancy of a different unit in the building started in 2017 and the tenancy for the current unit started under written agreement on April 5, 2018. Rent of \$1,423.00 is payable on the first day of each month. On September 24, 2019 the Landlord served the Tenant in person with a one month notice to end the tenancy for cause (the “Notice”). The reason stated on the Notice is that the tenant has engaged in an illegal activity that has, or is likely to adversely affect the quiet enjoyment, security safety or physical well being of another occupant. The details of the Notice are that the Tenant assaulted another tenant leaving significant injury to that other tenant.

The Landlord states that on September 22, 2019 the Tenant, while in the elevator of the building, assaulted another tenant. The Landlord states that it has knowledge of this assault through a video from inside the elevator. The Landlord confirms that the video carries no sound. The Landlord states that the incident was only discussed with the other tenant by another agent, the Witness. The Landlord states that it personally has no other knowledge of the incident other than from the video. The Landlord states that it has not had any other reports or complaints in relation to the Tenant and that the Landlord agrees with the content of the Tenant's Witness letters in their description of the Tenant. The Landlord states that the incident was reported to the police however the outcome of that report is unknown.

The Tenant states that on the date of the incident the other tenant was angry about a food issue. The Tenant states that the other tenant joined the Tenant, its partner and other tenants, in the building elevator and continued to yell. The Tenant states that after asking the other tenant to stop yelling that tenant became aggressive and advanced towards the Tenant and its partner spitting and screaming. The Tenant states that the spit landed on the Tenant's partner. The Tenant states that the other tenant then began to direct racial slurs at both the Tenant and its partner. The Tenant identifies as an indigenous person and states that the other tenant is not indigenous. The Tenant states that one of the other tenants was a woman who along with the Tenant's partner were seen to be traumatized by the other tenant's behavior. The Tenant states that when the elevator door opened the other tenant again moved towards the Tenant and its partner, the Tenant pushed the other tenant out of the elevator and followed the other tenant outside the elevator. The Tenant describes the other tenant as being taller and much larger than the Tenant. The Tenant states that he left the elevator with the other tenant due to the confined space, the other tenant's aggression, and to reduce the risk to the other women present. The Tenant states that he was scared and because of this fear the Tenant believed the other tenant needed to be subdued. The Tenant states that after subduing the other tenant and walking away the other tenant continued to yell racial slurs and taunt the Tenant. The Tenant provides a Witness letter from the

Tenant's partner setting out details of the incident with reference to the other tenant's past behavior.

The Tenant states that the other tenant has been known to the Tenant for about 3 years and knows the other tenant to be belligerent, loud, aggressive and a bully towards other tenants and the Landlord's staff. The Tenant offers as an example an incident that occurred during the summer in which the other tenant turned its music so loud that residents across the street complained. The Tenant states that the other tenant yelled for 45 minutes after the Tenant asked the other tenant to turn down the music. The Tenant describes this yelling as making no sense. The Tenant states that this incident was reported to the Landlord who informed the Tenant that nothing could be done as they cannot comprehend the other tenant's behavior or words. The Tenant states that at least 6 complaints were made to the Landlord however there has not been any behavior change on the part of the other tenant. The Tenant states that the police investigated, talked to the other persons in the elevator at the time of the incident and also viewed the video. The Tenant states that the police considered that the Tenant's acts were made in self-defence and that the Tenant had been thoroughly provoked.

The Landlord states that while there have been complaints about the other tenant nothing has been put in writing or recorded by the Landlord. The Landlord states that it is their practice to record and investigate oral complaints however this practice is not always followed. The Landlord states that the other tenant gets a "little heated" and can get a bit loud however the Landlord knows of no physical aggression on the part of the other tenant. The Landlord states that they acted to evict the Tenant as opposed to evicting the other tenant based solely on the silent video. The Landlord states that even if self-defence was involved, the Tenant took matters too far as the Tenant kicked the other tenant during the incident. The Landlord states that no steps were taken to speak to the Tenant of the other persons who witnessed the incident before issuing the Notice. The Landlord states that the other manager (the "Witness"), spoke to both the Tenant and the other tenant. Although not identified in advance as a Witness and with no

particulars of the Witness evidence provided for this hearing, the Landlord asks to call this Witness. As the Tenant did not object the Witness was brought into the hearing.

The Witness states that the other tenant informed the manager of the incident on the day of the incident and that the other tenant had a beat-up face. The Witness states that the other tenant informed the Witness of an assault by the Tenant. The Witness states that the only other knowledge of the incident came from the viewing of the video. The Witness confirms that none of the persons present at the time of the incident was spoken to nor was the Tenant spoken to about the incident. The Witness states that the other tenant is known to have been complained about in relation to noise. The Witness states that it has no other knowledge.

The Tenant states that following the incident the Tenant tried to get the Landlord's staff to witness the Tenant's apology to the other tenant or to mediate a resolution both before and after receipt of the Notice. The Tenant states that the other tenant did not accept the apology. The Tenant states that over the years multiple attempts have been made to talk to the Landlord about the other tenant's behavior and that tenant support services have also been approached. The Tenant provides three Witness letters from support and health care workers in relation to the Tenant's calm and trusted behavior. The Landlord agrees that the description of the Tenant is as contained in the Witness letters is accurate.

The Advocate argues that after years of racist taunts the Tenant hit a breaking point. The Advocate argues that the Tenant has been dealing with a tenant that continues to be a bully and has been left with an unresponsive Landlord. The Advocate argues that the Tenant was protecting his partner and that at most the Landlord should only have issued a breach letter.

The Landlord states that if the Notice is upheld, the Landlord would ask for an order of possession no later than January 31, 2020 in order to give the Tenant more time to find another tenancy.

Analysis

Section 47(1)(e)(ii) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if 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. The Landlord relies solely on a silent video of the incident and has no other evidence of any words or action by the other tenant leading up to and during the time of the incident. The Landlord provided no evidence from any person present during this time. The Landlord provided no supporting evidence of significant injury to the other tenant. The Landlord did not follow up with the police. As the Tenant provided undisputed evidence of provocation and aggression toward the Tenant and its partner by the other tenant, that the Tenant took defensive action over concern about the safety of his partner and another woman present in the elevator, of the of the relatively larger size of the other tenant in comparison to the Tenant, and that the police investigated the matter thoroughly without charge, I find on a balance of probabilities that the Landlord has not substantiated that the Notice is valid for tis reason. I note further that that this was a one-time incident and of witness letters indicating the Tenant's otherwise trustworthy, helpful and calm behavior, however I strongly caution the Tenant against further incidents of this nature. The Notice is cancelled, and the tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 09, 2019

Residential Tenancy Branch