



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYALCITY LEGION HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for October 8, 2019. I had allowed the landlord's adjournment application as the landlord's agent was in a location that did not have reliable phone service. The landlord's agent indicated that he would be available after October 24, 2019, and tenant indicated that he did not oppose the adjournment application.

The adjournment decision dated October 8, 2019 noted the requirements for service of the hearing package and evidence. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant also acknowledged receipt of the landlord's evidence for this hearing, and was ready to proceed.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant attended the hearing with his advocate LH. RR represented the landlord in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord gave undisputed sworn testimony that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice), dated July 26, 2019, was personally served to the tenant on August 1, 2019. The effective date indicated on the 1 Month Notice was August 31, 2019. I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on when the tenant moved into the building. In April of 2016 the tenant moved into a different rental unit. Monthly rent is currently set at \$642.00 plus \$40.00 for utilities, payable on the first of every month. The tenant paid a security deposit in the amount of \$250.00, which the landlord still holds.

On July 26, 2019 the landlord issued the notice to end tenancy providing two grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord testified that the 2 Month Notice was issued because of issues with a guest whom the tenant had allowed into the building, and continues to frequent the building despite being prohibited from doing so.

The landlord testified that the problems began in April of 2018 when it was reported by another tenant that a female guest of the tenant had been observed to be conducting drug transactions on the property, and was staying with the tenant in his rental unit. The landlord continued to receive correspondence from other tenants in the building about the tenant's guest about their observations, which are included in the landlord's evidentiary materials.

The landlord sent a memo to the tenant on May 31, 2018 regarding the "presence of a long-term guest", and requested a time to discuss the matter with the tenant. A second memo was issued on August 1, 2018 warning the tenant that he is responsible for the behaviour of his guests, whom the landlord believed to be the tenant's niece at this time.

The landlord testified that he had met up with the tenant in June of 2018 to discuss the problems with this guest, and the tenant responded that this person had a strong personality, and he was unable to convince the guest to leave. The landlord testified that since the Notice to End Tenancy was issued on October 28, 2019, the guest continues to frequent the building. The landlord testified that the guest was found sleeping in the women's bathroom on the thirteenth floor the Thursday prior to the hearing date. The landlord testified that he was unable to confirm how the guest was

gaining access into the building, but the landlord is seeking the end of this tenancy as the tenant was responsible for introducing the guest into the building.

The tenant's advocate provided the following submissions on behalf of the tenant. The advocate stated that the tenant disputes the allegation that the tenant had introduced this person into the building. The tenant also disputes that this person is his niece. The advocate stated that this was a big housing complex that houses multiple tenants, and that this guest was already acquainted with others in the building before he had moved in. The tenant also disputes the statement that the guest would stay overnight with the tenant.

The advocate stated that the tenant has severed all contact with this guest since the Notice to End Tenancy was issued, and is unaware of who is letting this person into the building. The advocate stated that this person had a key that was given to her by another tenant. The landlord does not dispute this, but stated that the tenant was responsible as he was the one who had introduced this guest to the building.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 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. The tenant filed his application on August 8, 2019, 7 days after receiving the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the notice.

I have considered the concerns brought up by the landlord, as well as the evidence that they had provided to support their reasons for ending this tenancy. I have also considered the testimony of the tenant. It was undisputed by both parties that the building is frequented by a person who is known to the tenant and other tenants in the building. This guest is the primary reason for why the landlord is seeking an Order of Possession as the landlord believes that tenant is responsible for introducing this guest to the building.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In this case, the landlord believes that the tenant has breached the tenancy agreement by allowing a long-term guest to reside with him beyond the allowable period without permission of the landlord. The landlord provided documents to show that the tenant was given warnings that this ongoing behaviour could result in the end of this tenancy.

In light of the fact that the tenant disputes ever having allowed this guest to stay overnight with him, the burden falls on the landlord to support that this breach had in fact taken place. Despite the concerns of the landlord and other tenants, I do not find the breach to be sufficiently supported by evidence. I am not satisfied that there has been a breach of a material term of the tenancy which justifies the end of this tenancy.

The landlord also cited the following reason for ending this tenancy: *“The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.”*

It was undisputed by both parties that this guest continues to frequent the building, against the landlord’s wishes. The tenant disputes the landlord’s allegations that he was the party who had introduced the guest to the building. Furthermore, the tenant testified that he had ceased contact with this guest since being issued the 1 Month Notice. As stated above, the burden falls on the landlord to support that they have sufficient cause to end the tenancy on the grounds provided. In light of the conflicting testimony, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant is or was responsible for the guest, and the guest’s continued disturbance of the landlord and others in the building.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*, and accordingly I am allowing the tenant’s application for cancellation of the 1 Month Notice dated July 26, 2019. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

I allow the tenant’s application, and the 1 Month Notice is cancelled. The 1 Month Notice of July 26, 2019 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: December 5, 2019

Residential Tenancy Branch