



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to section 47.

Both the tenant and the landlord attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Should the Notice be upheld or cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenant rents one of eight bedrooms in a house, shared with seven other tenants. There are two bathrooms in the house and the tenants share a laundry facility. A written tenancy agreement was drafted but the tenant has not signed it because he takes issue with some of the clauses listed in the addendum. No copy of the tenancy agreement was provided into evidence.

The landlord provided the following testimony. The month to month tenancy began on September 1, 2018 with rent set at \$550.00 per month. A security deposit was collected and is being held by the landlord.

On January 31, 2020, the landlord personally served the tenant with a One Month Notice To End Tenancy for Cause. No copy of the Notice was provided as evidence, however the parties agree that the Notice was signed and dated, contains the address of the rental unit and provides an effective date of March 1, 2020. The reasons for ending the tenancy are:

1. the tenant has allowed an unreasonable number of occupants in the unit/site;
2. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
4. tenant has assigned or sublet the rental unit/site without landlord's written consent.

The description of the reasons for ending the tenancy read:

The tenant of [another room] emailed notice of [this tenant] letting in an unauthorized person into the house and into another tenant's suite. A house manager informed me of the same thing and that [tenant's name] lied to him. See attached emails from above. Also, has had two warnings in the past.

During the hearing, the landlord advised that reasons 1 and 4 were invalid reasons for ending the tenancy with this tenant and that only reasons 2 and 3 should be considered.

On Thursday, January 30, the landlord received an email from the tenant in room #8 regarding a homeless person staying in room #2. She observed the tenant in these proceedings open the front door to the woman, now referred to as "S", and allowed her to stay in room #2 because he too had a key. The tenant in #8 spoke to "S" and "S" asked the tenant from room #8 not to inform the building manager of her presence as "S" is not supposed to be staying there. The tenant from room #8 further states in her email:

'There are many homeless in the area and I am not comfortable knowing there are transient people coming and going as it feels unsafe to me.'

On the same day, the building manager sent an email to the landlord advising of the same problem. In this email, the building manager states the tenant in these proceedings told him “S” was hiding from an abusive partner, not staying in the absent tenant’s room and that she was gone by 7 p.m. every night. Both the tenant in room #8 and the building manager have seen “S” *sneaking around the house in the night when going to the washroom and early morning*. He states ‘...if her partner is truly violent, she and [tenant] put the tenants of [house] in danger willingly and with no thought for their wellbeing. He concludes his email with *[tenant] may not be aware of this, however it is on him as well if he did knowingly put the tenants in this dangerous position*’.

The landlord provided unrelated evidence regarding the tenant ‘bullying’ other tenants in the building, however since only the elements described in the Notice were provided as reasons for ending the tenancy, only those will be referred to in this decision. The landlord submits that because “S” was fleeing from an abusive partner, her presence in the house shared by 7 other tenants is a danger to them. The unwelcome “S” sharing the common bathroom of the house caused the remaining occupant/tenants living there to feel their health and safety were being compromised by this stranger. The fact that the tenant in these proceedings aided “S” in accessing unit #2 and helped ‘hide’ her from the building manager is sufficient grounds to end the tenancy.

The tenant provided the following testimony. He was given permission to go into room #2 by the occupant before that person left on vacation for 2 months. This was so he could stream movies on the other occupant’s tv while he was gone. This is not disputed by the landlord. While there on January 21st, he discovered “S” in the occupant’s bed. He immediately emailed the occupant of #2 who advised him that he was aware she had a key, that she could *come in and wait for me and drop off a bag*. The tenant in these proceedings felt “S” had the necessary ‘permission’ from the occupant of room #2 to be in house. He acknowledges holding the door open for “S” when she had her hands full with bags as he would do for any of the residents.

On January 30th, the tenant sent an email to the occupant of room #2 advising that the building manager knows about “S” and that she is staying in his place during the day. He goes on to say *“I explained to him that “S” was fleeing domestic violence and that she just needed a place during the day while her ex is at work. When you get back, you need to talk to [landlord] and explain to her that “S” was not staying overnight. Just during the day when her ex was not at work...”* A copy of the email exchange was provided by the tenant.

The tenant testified that he didn't consider the presence of "S" in the house to be a danger to the other occupants of the house since the ex-partner of "S" was only abusing her to get her welfare cheque. It wasn't physical abuse, just financial abuse of "S".

As far as the tenant was concerned, "S" had permission to stay in room #2 from the room's occupant. If he knew she wasn't permitted, he would have made her leave. As far as he knows, he didn't consider the presence of "S" to be a safety issue. She didn't disturb anyone, didn't steal anything, didn't make a mess and was only there during the day. The presence of "S" was a miscommunication between the occupant of #2 and himself that he should have had straightened out immediately but didn't. If the building manager were concerned with the presence of "S", he would have asked her to leave himself.

He did not ask the landlord or the building manager if his facilitating "S" being in the shared house OK with them, since he and the building manager do not get along. The building manager is dishonest, is a bully and has been trying to get him evicted for a long time. All communication between them must be in writing because the building manager is not true to his word. The tenant states he is well liked in the building and the neighbourhood.

Analysis

The parties agree the tenant was personally served with the Notice on January 31, 2020. In accordance with sections 88 and 90 of the *Act*, I find the tenant was duly served with it on that date.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice. The tenant filed to dispute the Notice on February 4, 2020, within the 10 day period.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that:

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. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

In this case, the tenant acknowledged that he willingly allowed “S” to occupy his neighbour’s unit #2 while that tenant was away overseas. He was supplied with a key to the unit and provided evidence that he regularly communicated with the absent occupant of unit #2 regarding the presence of “S” in the unit. He testified that he felt sufficient ‘permission’ to be in the house with the 7 other tenants was granted by the absent tenant and that he did not feel any need to consult with the landlord or the building manager regarding “S” in unit #2 that he was overseeing during that occupant’s absence.

Had this tenancy involved a self-contained rental unit where the tenants had their own units with personal bathrooms and kitchens, the actions of the tenant by assisting his neighbour to bring in an unwelcome guest would not be a cause to end the tenancy. However, this is an unusual case where eight tenants share a house with 2 common bathrooms and common entryways; making the health and safety of the occupants especially burdensome for the landlord.

It is reasonable to conclude that the 8 ‘housemates’ would be familiar with one another and feel relatively safe knowing one another’s identities. The tenant in this proceeding has jeopardized the health and safety of his ‘housemates’ by facilitating the presence of an unwelcome person to the house. The evidence presented by the tenant himself clearly shows he was an active party in harbouring “S” and putting the safety of the remaining occupants in jeopardy. Despite the tenant downplaying the potential danger of the ex-partner of “S” because it was ‘only’ financial abuse being suffered by her; the tenant has provided contradictory evidence in his January 30th email whereby he states, *‘I explained to [building manager] that “S” was fleeing domestic violence’*. I concur with the landlord’s assertion that the tenant put the remaining occupants’ health and safety in jeopardy should the ex-partner of “S” come looking for her. Likewise, in a space where the tenants use a common bathroom to shower, bathe or use the toilet, having the presence of an unknown, unwelcome stranger also unreasonably disturbs them.

To be clear, by allowing “S” to enter the building and not advising the landlord of her presence in unit #2, “S” is a person permitted on the property by the tenant. As that person has significantly interfered with or unreasonably disturbed another occupant or

the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord, the landlord is entitled to an Order of Possession.

Section 55(1) of the *Act* reads as follows:

(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Although a copy of the Notice was not provided, both parties provided oral testimony as to the content. Both agreed that the Notice is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

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: April 06, 2020

Residential Tenancy Branch