



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms its email address as set out in the Tenant’s application.

Issue(s) to be Decided

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

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are undisputed facts: The tenancy started on April 1, 2014. Rent of \$328.00 is payable on the first day of each month. No security deposit was collected.

On March 5, 2020 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door and by sending the Notice by registered mail. The reason stated on the Notice, with details included both in the Notice and in an attached letter, is that the tenant or a person permitted on the property by the Tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The Landlord states that on February 18, 2020 the Tenant allowed an unauthorized woman into the building. The Landlord states that the Tenant knew that this person was not allowed into the building as the Tenant was given a letter dated August 13, 2020 about this person. The Tenant states that on February 18, 2019 the Tenant saw the woman was being assaulted so the Tenant allowed the woman into the building for safety. The Tenant states that it did not know that this person was not allowed into the building. The Tenant states that the person is just a small woman. The Tenant states that this person stayed for a couple of hours in the building until the assaulter left. The Tenant states that nothing occurred as a result of the woman waiting in the building.

The Landlord states that on February 20, 2020 the Tenant allowed this same person into the building. The Landlord states that nothing occurred as a result of this entry. The Landlord states that it has a photo to support this entry. The Tenant states that it did not allow anyone into the building on that date.

The Landlord states that on March 3, 2020 the Tenant left the back door open. The Landlord states that this open door was reported by another tenant and that the Landlord closed the door within 5 minutes after the report. The Landlord states that this caused serious jeopardy to the building as the door opens to a busy street occupied by drug users and that people could have entered the building. The Landlord states that there no harm occurred as a result of this act by the Tennant. The Tenatn states that it did leave the door open as the Tenant was outside smoking and had forgot its keys. The Tenant states that it saw the Landlord close the door and that the Landlord said nothing to the Tenant. The Landlord states that it did not see the Tenant at the door.

The Landlord states that there have also been numerous noise complaints about the Tenant with the last warning letter given in May 2019. The Landlord states that there have been no further complaints since this date.

Analysis

Section 47(1)(d)(i) and (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

- (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.

It is noted that the Notice does not include ending the tenancy for putting the Landlord's property at significant risk. As a result, I will only consider the evidence of the Parties that is relevant to the reasons on the Notice. Further the Landlord must show evidence to support that the Tenant caused significant problems before the Notice was issued and evidence of cause after that date may only be considered if the Notice is found to be valid in advance of its service on the Tenant.

The August 13, 2019 letter does not inform the Tenant that this person who was allowed into the building by the Tenant on February 18, 2020 was not allowed into the building by the Landlord. Further this letter was sent more than 6 months prior to the entry and even if the letter could be seen as notice that this person should not be allowed entry, there is no length of time indicated for this exclusion. For these reasons I find that the Tenant could not have known more than 6 months after the August 13, 2019 letter that this person's entry into the building was not allowed. Further based on the Tenant's undisputed evidence, I accept that the entry given was for the safety of a woman being assaulted. There is no evidence that the entry caused any problem at all. It more likely saved a woman from further violence and to end a tenancy for allowing such entry defies all decency.

The photo dated February 20, 2020 does not show a person entering the unit. It only shows a person standing against the exterior wall at the door. For this reason, I accept the Tenant's evidence that no entry was allowed on that date. Further, even if there was an entry, there is no evidence that it caused any harm. Finally, the evidence of the door being opened by on March 3, 2020 does not support any finding of serious jeopardy or disturbance to anyone or anything. There is no evidence that anything occurred as a result of the open door. Further there is no evidence that the drug users on the street outside the building would cause any harm to anyone or anything simply by virtue of using drugs.

The evidence of noise complaints occurred more than six months prior to the issuance of the Notice with none since and there is no evidence that the Landlord sought to end the tenancy at that time. This indicates to me that the noise was not significant six months ago and therefore cannot now be considered significant or unreasonable.

For the above reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused any significant interference, unreasonable disturbance or serious jeopardy to anybody or anything. I find therefore that the Notice is not valid for its stated reason and that the Tenant is entitled to a cancellation of the Notice. 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: May 07, 2020

Residential Tenancy Branch