



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 17, 2020 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated March 08, 2020 (the “Notice”).

The Tenant appeared at the hearing with the Occupant and Counsel. The Landlord and Co-landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The Tenant, Occupant, Landlord and Co-landlord provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony and submissions. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, Co-landlord and Tenant. The tenancy started December 14, 2019 and is for a fixed term ending June 30, 2020. Rent is \$1,800.00 per month due on or before the first day of each month. The agreement is signed by the Landlord, Co-landlord and Tenant.

The Occupant was originally named on the Application as a tenant. The tenancy agreement states:

Correct legal names of all adult persons...**other than tenant(s)** to occupy the rental unit...[Occupant's name] (emphasis added)

Given this, I asked the parties if the Occupant is a tenant. The Co-landlord testified that the Occupant is not a tenant and that the tenancy agreement was specifically put in the name of the Tenant and not the Occupant. Counsel did not dispute that the Occupant is an occupant and not a tenant. Given this, the Occupant has been removed from the Application as occupants have no rights or obligations under the tenancy agreement and cannot dispute notices to end tenancy.

The Notice was submitted as evidence. The grounds for the Notice are that the:

1. 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 and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

There was no issue that the Notice was posted on the door of the rental unit March 09, 2020 and received the same day.

The Co-landlord outlined the basis for the Notice as follows. A search warrant was executed at the rental unit. The Tenant was arrested for trafficking drugs. The landlords became aware of this through a news article. The news article mentions weapons were involved. Police were not able to provide further information about the circumstances. The landlords' primary concern is for other tenants in the triplex that the rental unit is part of. The Tenant's lifestyle puts the safety of other tenants at risk. Further, the landlords no longer feel comfortable attending the property to do maintenance due to the Tenant's lifestyle and the associated risks involved.

The Co-landlord confirmed it is not the landlords' position that the Tenant has damaged the landlords' property or adversely affected the quiet enjoyment, security, safety or physical well-being of others and that the issue is that the Tenant has engaged in illegal activity that it likely to cause these issues.

The Co-landlord made the following submissions in relation to damage to the landlords' property. If there are further search warrants executed at the rental unit, police will enter using whatever method and force they need to and can access any area of the rental unit. The Tenant's lifestyle could involve situations where other competing interests result in damage, for example if there is money owing or disagreements that result in damage or violence.

The Co-landlord also raised concerns about the Tenant being on bail conditions and potential police visits disturbing other tenants in the triplex.

Counsel made the following submissions. As shown in the news article, five search warrants were executed at five different locations. There is no evidence to suggest that illegal activity was found at the rental unit. There was no damage done to the rental unit when the search warrant was executed. There was nothing found at the rental unit. The Tenant was not at the rental unit when the search warrant was executed. Nothing was found on the Tenant when he was arrested. There were no weapons found on the Tenant or in the rental unit. The Tenant is innocent, and the charges are false.

Counsel made the following further submissions. The possibilities the landlords raise as issues are hypothetical situations and there is no evidence these will occur. There is no evidence that the Tenant has disturbed other tenants in the triplex. There were no complaints from other tenants in the triplex about the search warrant being executed. Nobody was injured. There are no safety issues. Even if police knocked on the rental unit door, this would not disturb other tenants in the triplex.

Counsel acknowledged that the Tenant has a criminal record but pointed out that he did at the time the tenancy agreement was entered into. Counsel noted that the prior offences had nothing to do with the rental unit. Counsel submitted that the current charge is not connected to the rental unit. Counsel submitted that the prior conviction does not show a pattern of behaviour because the current allegation is false.

Counsel referred to case law and prior RTB decisions not submitted.

I asked the Co-landlord if the landlords were relying on any evidence to dispute the circumstances outlined by Counsel including that there was nothing found in the rental unit, the Tenant was not in the rental unit when the search warrant was executed and nothing was found on the Tenant when he was arrested. The Co-landlord said the landlords have no evidence to confirm or refute these points. The Co-landlord advised that the prior charge was included to show a lifestyle choice by the Tenant and that this was not one random incident.

The parties submitted the news article mentioned.

Analysis

The Notice was issued under section 47(1)(e) of the *Residential Tenancy Act* (the "*Act*"). The Tenant had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*. There was no issue that the Tenant received the Notice March 09, 2020. The Application was filed March 17, 2020, within the time limit.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 47(1)(e) of the *Act* states:

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) 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...

Policy Guideline 32 deals with ending a tenancy based on illegal activity and states in part the following:

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of

damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants...

The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property...

The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities.

I am not satisfied the Landlord has proven the grounds for the Notice. There is insufficient evidence before me to prove that the Tenant has engaged in illegal activity that is related or connected to the rental unit.

The Landlord has the onus to prove the Tenant has engaged in illegal activity that is related or connected to the rental unit. The Landlord must present evidence that shows it is more likely than not the Tenant has engaged in illegal activity that is related or connected to the rental unit.

I accept that a search warrant was executed at the rental unit and that the Tenant was arrested and charged with possession for the purpose of trafficking. These points are not in dispute. However, I do not find these points alone sufficient to prove in this hearing that it is more likely than not the Tenant has engaged in illegal activity that is related or connected to the rental unit.

The Tenant has not been convicted of an offence. I acknowledge this is not a requirement as stated in Policy Guideline 32. However, in the absence of a conviction, the Landlord must present sufficient evidence to show it is more likely than not the Tenant has engaged in illegal activity that is related or connected to the rental unit.

I find the evidence presented insufficient to prove the circumstances surrounding the search warrant, arrest and charge.

Counsel advised that nothing was located in the rental unit upon execution of the search warrant and nothing was located on the Tenant upon arrest. I accept these points for the following reasons. I have no concerns about the reliability or credibility of Counsel's submissions. The landlords did not refute these points. It is my understanding that the landlords do not know if anything was found in the rental unit or on the Tenant. There is insufficient evidence before me that calls into question these points.

I have reviewed the news article submitted. I do not find that this provides sufficient evidence about the circumstances surrounding the search warrant, arrest or charge. Nor does it call into question the submissions of Counsel. I find this because the article relates to five different search warrants executed at five different locations and five different people who were arrested. The news article does not show the particular circumstances surrounding the search warrant executed at the rental unit or the arrest and charge of the Tenant. Nor does it show that anything was found in the rental unit or on the Tenant.

The fact that the Tenant has been charged with possession for the purpose of trafficking alone does not address whether the illegal activity alleged is related or connected to the rental unit. I find based on Policy Guideline 32 that the Landlord must present evidence showing a connection between the illegal activity and the rental unit. I am not satisfied the Landlord has done so here.

As stated, I accept that there was nothing located in the rental unit upon execution of the search warrant. Given this, and in the absence of further evidence or details about the circumstances, I am not satisfied the Tenant has engaged in illegal activity at the rental unit.

The landlords point to the lifestyle associated with the illegal activity. In my view, the landlords' position is based on assumptions about the circumstances and mere possibilities rather than on compelling evidence showing the Tenant has engaged in illegal activity that is likely to cause the issues raised. Again, in coming to this

conclusion, I have considered that there was nothing located in the rental unit upon execution of the search warrant.

In my view, the Landlord has not submitted sufficient evidence about the circumstances surrounding the search warrant, arrest or charge. In the absence of further details and evidence, the Landlord has failed to prove the Tenant has engaged in illegal activity that is related or connected to the rental unit. Given this, the Landlord has failed to prove the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue 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 *Act*.

Dated: May 20, 2020

Residential Tenancy Branch