



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, FFT

Introduction

The tenant seeks to cancel a one month Notice to End Tenancy for cause dated June 26, 2020. She also seeks an order that the landlord comply with the tenancy agreement or the *Residential Tenancy Act* (the “RTA”) and provide services or facilities regarding laundry service, internet connection and heating.

The one month Notice alleges that the tenant or a person permitted by her on the premises has significantly interfered with or unreasonably disturbed another occupant. Additionally, the Notice claims that the tenant has breached a material term of the tenancy agreement and has failed to correct the breach within a reasonable time after being written notice to do so. Either of these grounds, if proved, are lawful grounds for eviction under s. 47 of the *RTA*. The Details of Cause portion of the one month Notice claims that it has been the tenant’s boyfriend GJ, who has been unreasonably disturbing another occupant, Ms. JC and that GJ has been living in the rental unit without the landlord’s permission.

Issue(s) to be Decided

Did GJ unreasonably disturb Ms. JC while she lived there?

Has the tenant fundamentally breached the tenancy agreement despite written warning to correct the breach?

Does the evidence show the tenant has been denied a service or facility justifying a compliance order?

Background and Evidence

The rental unit began as a two bedroom basement suite in the landlord's house. The written tenancy agreement discloses that the tenancy started in May 2016 and that the tenants were the applicant tenant Ms. GM and her brother Mr. GM.

At some point Ms. GM's brother moved out. At some later time the landlords arranged for Ms. JC to move into the bedroom vacated by Ms. GM's brother and to share the kitchen bathroom and laundry services with her.

Ms. JC moved out April 30, 2020.

Mr. FM is the landlord's husband. He testified that they have been living in the home since 2009. He said the tenant's boyfriend GJ is living with her in the suite below. Ms. JC wrote a letter to the landlord saying so. He has seen GJ there since the tenant moved in but at first did not think he was living in the rental unit. He now knows GJ's car and it is there "just about daily." He attended at the rental unit mid-morning on July 2 and GJ was there. He can hear GJ's voice in his portion of the house.

The landlord testified that the tenant has never sought permission to have anyone live with her.

On being questioned by Ms. LO, the landlord confirmed the material breach alleged in the one month Notice is the fact that GJ is living there.

The tenant testified that she did ask the landlord if GJ could stay "as a guest" and received her consent. She said that GJ lives in another town and she produces a copy of his driver's licence and a BCAA letter dated June 2020 to GJ at another address.

The tenant has a number of complaints about Ms. JC while she shared this suite.

The tenant said the landlord is not providing access to the laundry facilities. The tenant's text requests, made in April of this year, for access go unanswered and the laundry door remains locked. The tenant indicates that GJ is there dropping off laundry.

She confirms the heating issue she raised in her application has now been fixed.

The parties noted there had been an earlier proceeding between these same parties, heard June 12, 2020 (file number shown on cover page of this decision). It is apparent from the decision in that matter that the tenant had made the same claims regarding heat, lack of internet and loss of access to the laundry. All three of those claims were dismissed without leave to re-apply.

Analysis

1. One Month Notice to End Tenancy for Cause

Significant Interference/Unreasonable Disturbance

It is alleged that the person interfered with and unreasonable disturbed was Ms. JC, the roommate who left April 30. The landlord has filed her letters to the landlord dated April 9 and April 15. The letters strongly suggest that GJ is indeed living there. She states he is not working and spends all day there “dominating the space.” She says he has knowingly appeared naked in her presence and that he smokes marijuana in the suite. In the April 15 letter Ms. JC reiterates that GJ has moved in, that she feels unsafe and is leaving.

The tenant filed a statement directly denying Ms. JC’s allegations and saying that Ms. JC was a rude and revengeful person.

The ending of a tenancy is a very serious matter. The burden of proof is on a balance of probabilities but a landlord is required to file clear and cogent evidence to prove just cause. I am aware of the remarks made by the June 12 arbitrator regarding the veracity of the tenant and GJ but that does not equate to Ms. JC’s credibility being given untested approval. It would not be just to end a tenancy based on the competing, unsigned, unsworn statements of the tenant and Ms. JC. Had Ms. JC attended, provided sworn testimony and been exposed to questioning, this result might well have been different.

I find that the landlord has not established on a balance of probabilities that the tenant or GJ significantly interfered with or unreasonably disturbed Ms. JC while she lived there.

Breach of Material Term

Residential Tenancy Policy Guideline 8, “Unconscionable and Material Terms” states that 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.”

In this case the material term in question is having GJ live there.

Neither party referred to any particular provision of the tenancy agreement restricting the number of occupants in the rental unit.

In her letter to the tenant dated April 10 the landlord accused the tenant of permitting GJ to move in saying “you never approached me to as or discuss the possibility of your boyfriend moving in ...”. The idea of the tenant’s boyfriend moving in was a possibility the landlord was willing to have discussed beforehand. Her opposition was based on the fact that the tenant did not have her approval for GJ to move-in. The proposition that the tenant could not have someone move in with her was therefore not a material term.

For this reason I find the landlord has not established that the tenant has breached a material term of the tenancy agreement.

The Notice to End Tenancy dated June 26, 2020 is hereby cancelled.

It should be noted that though this aspect of the Notice centered around the allegation that GJ had moved in, the Notice did not claim the tenant was permitting an unreasonable number of occupants in the unit, a lawful ground for eviction under s. 47 of the *RTA* and so that question was not addressed.

2. Compliance Order and Provision of Services or Facilities Order

The tenant’s request for this relief relates to the alleged absence of heat, lack of internet and loss of access to laundry. All three of these claims were advanced and dismissed in the dispute resolution matter cited on the cover page of this decision and heard June 12, 2020. No leave to re-apply was given. I am not at liberty to rehear that matter or to change the decision rendered in it.

Conclusion

The Notice to End Tenancy dated June 26, 2020 is cancelled. The remainder of the tenant’s claim is dismissed.

As the tenant has been only partially successful, I award her recover of \$50.00 of the filing fee. I authorize her to reduce her next rent by \$50.00 in full satisfaction of this award.

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: August 12, 2020

Residential Tenancy Branch