



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 concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause.

An agent for the landlord and both named tenants attended the hearing, one of whom is not a tenant but an Advocate for the tenant. The landlord's agent and the tenant each gave affirmed testimony and the parties and the tenant's Advocate were given the opportunity to question each other and to give submissions.

No issues were raised with respect to the exchange of evidentiary material, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause or End of Employment was issued in accordance with the *Residential Tenancy Act* specifically with respect to the reason for issuing it?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on July 1, 2019 and the tenant still resides in the rental unit. Rent is \$1,365.00 per month, which is subsidized and the tenant's share is \$375.00 payable on the 1st day of each month and there are no rental arrears. On August 30, 2019 the landlord collected a security deposit from the tenant in the amount of \$300.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a block containing 147 units on 11 floors. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on July 15, 2020 another agent of the landlord posted a One Month Notice to End Tenancy for Cause or End of Employment (the Notice) to the door of the rental unit, and a copy has been provided for this hearing. It is dated July 15, 2020 and contains an effective date of vacancy of August 31, 2020. The reason for issuing it states: "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park."

On June 18, 2020 the tenant broke down the door to the rental unit. The landlord repaired the damage, patched it up and had it operating while the landlord got a new one, and it was damaged a second time. Photographs have been provided by the landlord as evidence for this hearing.

The tenant testified that she broke the door because an element had been left on in the rental unit, and the tenant couldn't get staff to open it because of a shift change. The tenant offered to pay for it. The second time the door was broken was not the tenant's fault. The tenant asked staff to not let a person into the building, but they let him in. The person was the ex-boyfriend of the tenant, and he kicked the door down. The staff called police because they saw him break the door.

The landlord has not given the tenant any warning letters during the tenancy, and the tenant has not caused any damage in the building other than when the element had been left on in the rental unit. The landlord didn't put a patch on the door; the tenant bought something to fix it. Finally, the landlord put the new door on.

SUBMISSIONS OF THE LANDLORD:

The door was fixed on June 18, 2020 with a temporary patch and a new door was ordered. On July 15, 2020 the patch was broken again, and another door was taken from another unit. The incident with the tenant's ex-boyfriend was at the beginning of August, which was after the Notice was issued.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

Damage alone is not enough and does not meet the test for damages to evict a tenant. Significant damage is required. The tenant admits to a single incident, not twice and challenges the time-lines of the landlord in terms of repairs.

Serious health or social or life-skills should be considered, such as reduced ability to restrain herself. The landlord gave no warnings, and the tenant did her best to rectify the situation and made an offer to pay for repairs. Then did her best by asking staff to not let the ex-boyfriend in the building.

A warning prior to issuing the Notice is warranted. The tenant can only be held responsible if the ex-boyfriend was barred from the building and the tenant let him in. In this case, the staff let him in. There is no pattern, and the single incident does not justify termination.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reason for issuing it is in dispute.

There is certainly conflicting testimony of how many times the door has been broken and when. Any damage that may have been caused by the tenant or the tenant's guests after the date the Notice was issued is not relevant to the reason for issuing it.

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 notice to end the tenancy does NOT cite breach of a material term of the tenancy agreement, but that the "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park." A landlord is permitted under the *Act* to issue a notice to end the tenancy for that reason.

I have reviewed all of the evidentiary material, and although I don't entirely agree with the tenant's Advocate that the landlord is required to give a warning letter prior to issuing a notice to end the tenancy, I do agree that the landlord has the burden of proving that:

- the tenant or a person permitted on the property by the tenant caused significant damage; and
- that the damage is in fact significant.

In this case, there is no doubt that the tenant damaged the door, and I am satisfied that the damage occurred on June 18, 2020; the tenant does not dispute that.

The landlord gave 2 versions of events with respect to repairs made. He testified that the landlord repaired the damage, patched it up and had it operating while the landlord got a new one, and it was damaged a second time. In his submissions, the landlord stated that the door was fixed on June 18, 2020 with a temporary patch and a new door was ordered, and then on July 15, 2020 the patch was broken again, and another door was taken from another unit.

The tenant testified that she put a patch on the door, not the landlord. She also testified that she asked staff in the building to not let her ex-boyfriend in, but they did so and he broke the door. The tenant also testified that there have only been 2 incidents of breaking the door; one by herself and once by the boyfriend. I am not convinced that the landlord has established any other incidents.

I also find that the landlord would not have issued the Notice if the second incident hadn't taken place, likely because the tenant took responsibility for it. I am not satisfied in the circumstances that the ex-boyfriend was permitted on the property by the tenant, or that the tenant caused significant damage to the door after the June 18, 2020 incident, and therefore the reason for ending the tenancy has not been established. I cancel the Notice and the tenancy continues.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause or End of Employment is hereby 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 *Residential Tenancy Act*.

Dated: August 28, 2020

Residential Tenancy Branch