



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE BLOOM GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

On August 5, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause (the “Notice”) dated July 24, 2020, and for an order for the Landlord to comply with the *Act*. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – Evidence

During the hearing, the Tenant testified that the Landlord had redacted portions of the complaint letters that they had provided to the Tenant in their evidence package.

The Landlord testified that the copies of the complaint letters provided in the Tenant's evidence package had been redacted and that the complaint letters submitted in the evidence package to the Residential Tenancy branch had not been redacted.

As the complaint letters I have in evidence are different from the ones before the Tenant, I find that it would be procedurally unfair to the Tenant to consider this evidence in these proceedings.

Accordingly, I will not consider these complaint letters, submitted into documentary evidence by the Landlord, in my final decision for these proceedings.

Preliminary Matters – Severed Item

During the hearing, it became clear that there would be insufficient time to hear all of the issues included in the Tenant's application.

The parties were advised during the hearing that the Tenant's request to have an order for the Landlord to comply with the *Act* would be severed from these proceedings due to insufficient time.

Accordingly, I am dismissing with leave to reapply the Tenant's claim for an order for the Landlord to comply with the *Act*.

Issues to be Decided

- Should the Notice, dated July 24, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they served the Notice to end tenancy to the Tenant on April 24, 2020, by placing a copy in the main slot for the Tenant and by sending a copy by

registered mail. The Landlord submitted a copy of the Notice. The reason checked off within the Notice is as follows:

- *Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.*
- *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 or safety or lawful right of another occupant or the landlord*
 - *Put the landlord's property at significant risk.*
- *Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.*

The Tenant testified that they did receive the Notice on by registered mail and that they filed to dispute the Notice on August 5, 2020.

The Landlord testified that between April 5, 2020, and July 24, 2020, the Tenant had buzzed someone into the rental building 375 times. The Landlord submitted the building access log into documentary evidence.

The Landlord argued that due to the COVID-19 pandemic, the Tenant was endangering the other occupants of the rental building and the Landlord by allowing so many different people into the buildings.

The Landlord testified that they had issued two warning letters to the Tenant, one dated April 17, 2020, and the second dated June 12, 2020, regarding the number of guests the Tenant was having in their rental unit during the pandemic and advising them to comply with the social distancing directive set out by the provincial government.

The Landlord testified that between June 13, 2020, and July 24, 2020, the date the Notice to end tenancy was issued, the Tenant had, on four separate days, granted buzzer access to the rental building between six to eight times each day.

The Landlord and their witness both testified that they had personally witnessed many different people entering the rental property, who had been allowed in by the Tenant's buzzer code.

The Tenant testified that they are doing nothing wrong, that they have one friend that visits them regularly and a couple of others that visit them occasionally. The Tenant testified that they have a pet and that they make regular outings to the pharmacy and for supplies for themselves and their friend, and that the be buzzer is used for multiple access by the same person on most days.

The Tenant's witness testified that they visit the Tenant every day and use the buzzer access to gain entry and that they have only seen four people in the rental unit at any given time. The witness testified that it is mostly just them and the Tenant there and that maybe one or two other people may visit occasionally.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on July 29, 2020, five days after it had been sent to the Tenant by registered mail as per the deeming provision set out in section 90 of the *Act*.

Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. In this case, I find the Tenant had until August 8, 2020, to file their application to dispute the Notice. The Tenant filed their application on August 5, 2020, within the statutory time limit.

I have reviewed the Landlord testimony and documentary evidence, and I find that the crux of the Landlord's reason for issuing the Notice to end tenancy is that they feel that the Tenant has too many guests visiting them in their rental unit. The Landlord argued that due to the COVID-19 pandemic, the Tenant was allowing an unreasonable number of guests into the building, and this was putting the other occupants of the building and the Landlord at risk.

Section 9 of the Residential Tenancy Regulations (the "Regulations") states the following regarding a tenant's guests:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act [terminating or restricting services or facilities], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

Where I can acknowledge that the Regulations would not normally allow a landlord to restrict a tenant's guests, I do agree that we are in unusual times due to the COVID-19 Pandemic (the "pandemic").

Due to the provincial governments enactment of a state of emergency in response to the pandemic, I find that this is a reasonable circumstance in which a landlord may ask a tenant to restrict the number of guests in order to abide by the provincial health authorities' social distancing guidelines and the government order restricting the size of gatherings and events.

During these proceedings, the parties offered conflicting verbal testimony regarding the number of guests the Tenant had visiting them. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, it is the Landlord who holds the burden of proof.

I have reviewed the Landlord's building entry logs, and I agree that the logs show several accesses events, where the access buzzer for this Tenant's rental unit had allowed up to nine entries a day to the rental building. However, I find that these logs fail to show if this was nine different people entering the building, or if there were multiple entries made by the same person, nor do they show how many people were in the Tenant's rental unit at one time.

Overall, I find that there is no evidence before me to show that this Tenant had breached the provincial health authorities COVID-19 related orders or guidelines. As the Residential Tenancy Act does not allow a landlord to restrict the guest of a tenant and

this Landlord has failed to provide evidence of a breach of the provincial health authorities COVID-19 orders, I find that there is insufficient evidence to prove to my satisfaction that this tenancy should end on any of the grounds in which this Notice was issued. Ultimately, I find that the Notice dated July 24, 2020, is of no force and effect.

Conclusion

The Tenant's application to cancel the Notice, dated July 24, 2020, is granted. The tenancy will continue until legally 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 *Residential Tenancy Act*.

Dated: October 1, 2020

Residential Tenancy Branch