



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that its email address as set out in the Tenant’s application is correct. The Tenant withdraws its claim for an order for compliance.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started in 2014. Monthly rent of \$965.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$435.00 as a security deposit. On September 8, 2020 the Landlord gave the Tenant a one month notice to end tenancy for cause (the “Notice”). The Notice sets out 4 reasons for ending the tenancy and includes details for the reasons.

The Landlord states that the Tenant breached a couple of material terms in the tenancy agreement. The Landlord states that although a letter was sent to the Tenant about the

breach of these terms, no date was provided in the letter for the Tenant's compliance with the breaches set out in the letter.

The Landlord states that the Tenant has paid the pet deposit and the Landlord agrees that this reason in the Notice is no longer valid.

The Landlord states that on December 26, 2029 the Tenant engaged in illegal activities by engaging in a fight with its guest both inside the Tenant's unit and in the common area. The Landlord states that although the police were called it is unknown whether any charges were laid in relation to this incident and does not know if an assault occurred.

The Landlord states that on December 31, 2018 one of the Landlord's staff members saw a guest of the Tenant hanging around the boiler room. The Landlord states that this guest was arrested and that later the staff person found crack pipes and pieces of paper with the Tenant's name in the boiler room.

The Landlord states that on August 22, 2020 a guest of Tenant stole the Landlord's cleaner's vacuum cleaner that had been left in the hallway by the cleaner. The Landlord states that upon questioning the Tenant the Tenant told the Landlord to prove the theft. The Landlord states that the next day the Tenant was given evidence of intercom use and video footage and the vacuum was returned by the guest on that same day.

The Tenant states that there was no fight that occurred on December 2, 2019 and that no police were called, or charges laid in relation to an incident on that date. The Tenant states that it does not have any friends that use crack. The Tenant states that it knows nothing about anything in relation to the boiler room. The Tenant states that the area that the vacuum cleaner was left is a "free pile" bench and that its friend thought it was to be given away. The Tenant states that everyone takes items left in this free area. The Tenant states that once it was realized that the vacuum belonged to the cleaner it was

immediately returned on the same day. The Landlord states that the area is not “designated a free area and that there is no custom of items being left there.

The Landlord states that the Tenant has a lot of guests coming and going and that the Landlord assumes there are drug sales from the unit. The Landlord states that the Tenant’s guests create a significant risk of theft. The Landlord states that there have not been any incidents of theft. The Landlord states that it has no evidence of any serious jeopardy to anyone’s else. The Landlord states that the Tenant is creating a serious jeopardy to the lawful right of other tenants not to be solicited by leaving notes on other tenants’ vehicles seeking to buy the vehicles. The Landlord states that nothing in the tenancy agreement restricts the Tenant from offering to purchase items from another tenant. The Landlord states that it has no evidence of the Tenant significantly interfering with anyone but that the Tenant has disturbed other tenants on two occasions. The Landlord states that on August 21, 2020 the Landlord received a complaint of the Tenant using power tools late at night. The Landlord states that on September 4, 2020 the Landlord received a complaint of noise from the unit. The Landlord states that the Tenant’s behavior is unreasonable as the Landlord has been continually sending letters to the Tenant to keep the noise down. The Landlord states that it cannot confirm the dates of those letters and confirms that no such letters have been provided as supporting evidence. The Tenant states that it never received any notices about noise or disturbances and was never told about the two complaints made in August and September 2020. The Tenant states that the complaint in August 2020 may have been when the Tenant was hanging a picture and using a cordless drill. The Tenant states that its vacuum was noisy, so the Tenant purchased a new quieter vacuum.

The Landlord states that since the Notice was given to the Tenant and on September 9, 2020 the Tenant’s guests violently confronted the Landlord’s security person. The Landlord provides an email setting out this incident. The Landlord states that the Tenant’s guests were swearing and drinking outside the building and confronting other

tenants. The Landlord states that the Tenant came down to calm the guests and gave the security person a wrong unit number for the Tenant. The Landlord states that the Tenant informed the security guard that if it came any closer to the Tenant the guard would be “smacked”. The Landlord states that the police were going to be called but did not as one of the guest’s mother had just passed away.

The Landlord states that on August 10, 2020 another tenant found needles on the common park area and saw a Tenant’s guest passed out at that location. The Landlord states that while this incident did not disturb anyone, this activity puts kids at risk. The Landlord states that while this tenant did not see the guest use the needles, the tenant believes that the needles came from the guest’s pocket. The Tenant states that it does not know anyone who uses needles other than two friends that have diabetes. The Tenant states that as a part-time social worker it often has as many as 6 people over as guests in the evenings. The Tenant states that these persons are just friends who talk. The Tenant states that the Landlord’s evidence indicated that the needles were reported after the area was cleaned up. The Tenant argues that the other tenant just saw someone and assumed this was the Tenant’s guest. The Tenant argues that there is no link proven between the Tenant and the needles. The Tenant argues that the Landlord has given inconsistent evidence of dates in relation to the incident with the security person. The Tenant argues that the Landlord has not provided evidence of any significant disturbance of other tenants as the emails used to support this disturbance have all the names blacked out and are all from one email address. The Tenant argues that the Landlord did not investigate after the complaint of power tools either at the time or to the present. The Landlord states that 3 tenants have complained of noise, that they are all elderly and used the one tenant’s email address as the others did not have email addresses.

Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if , inter alia,

- the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- the tenant or a person permitted on the residential property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - has caused or is likely to cause damage to the landlord's property,
 - 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, or
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Policy Guideline #8 sets out that to end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, 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.

Given the Landlord's evidence that the breach letter did not include any date for compliance with a material term, I find that this reason to end the tenancy is not valid. Based on the Landlord's evidence that the Tenant has paid the pet deposit I find that this reason to end the tenancy is not valid.

The Landlord provides no evidence to support that the Tenant is carrying out illegal activities in its unit. As the Landlord has made only an assumption based on the number of the Tenant's guests and given the Tenant's evidence of its part-time work, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant is carrying out illegal activities from inside its unit. While the Landlord has provided evidence to support that there was some altercation in December 2019, I consider that this was a one-time incident and there is no evidence of either the Landlord or any of the other occupants of the building being disturbed. The Landlord has only provided evidence of a guest of the Tenant being around an area where crack pipes were found. I do not find this evidence to be persuasive or to provide a sufficient link between the Tenant and the crack pipes. Even if the Tenant's guest could be connected there is no evidence that this significantly disturbed anyone. There is no evidence that leaving notes offering to purchase a vehicle is an illegal activity. Given the Tenant's evidence of a "free area" and the undisputed evidence that the vacuum was returned within one or two days, I find on a balance of probabilities that the taking of the vacuum was done in error and was not an illegal activity. As the matter of the needles and incident with the security guard occurred after the Notice was served, I consider that this is not evidence of the validity of the Notice. Further the evidence connecting the Tenant's guest to the presence of needles is too weak to reach a determination on a balance of probabilities that this incident is an escalation of the Tenant's behavior. For these reasons I find on a balance of probabilities that the Landlord has not substantiated either illegal activity or disturbance to anyone by the activity.

While it is clear that at one tenant has complained about workshop type noise, a review of the supporting letters indicates that the noise occurred mostly during daytime hours

and while there is evidence of a disturbance, I do not consider this noise to have been significant as there is no evidence that the Landlord took any action to either talk to the Tenant about the complaint or to inspect the unit for such type of work taking place. I am also concerned that the Landlord has not provided the Tenant with full evidence of the complaints made by other tenants as all names are blacked out. I consider this evidence to therefore be weak. Although the Landlord submits that each time a complaint is made written notice of the violation is given to the Tenant the Landlord has only provided a copy of one warning letter dated September 5, 2020. Given the Tenant's evidence of no warning letters being given and for the above reasons I consider that the Landlord has not substantiated any significant or unreasonable noise or disturbance from the Tenant's unit.

For the above reasons I find that the Landlord has not provided sufficient evidence to substantiate the reasons for the Notice. The Tenant is therefore entitled to its cancellation. The tenancy continues. As the claim to cancel the Notice has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

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: November 09, 2020

Residential Tenancy Branch