



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 tenant seeking an order cancelling a notice to end the tenancy for cause.

An agent for the tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

Although the tenant's agent does not have the landlord's evidentiary material, the landlord's agent testified that all evidence was provided to the tenant by registered mail on December 4, 2020 and the landlord has provided a copy of a Registered Domestic Customer Receipt containing a date stamp of December 4, 2020 from Canada Post. The tenant's agent advised that the tenant is currently in a treatment facility and has not provided the tenant's agent with copies of the evidence. Considering the testimony of the landlord's agent and proof of such mailing, I am satisfied that the tenant has been provided with the landlord's evidentiary material, and all evidence provided by the parties 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 was issued in accordance with the *Residential Tenancy Act*, and specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2020 and expires on February 28, 2021 thereafter reverting to a month-to-month tenancy, and the

tenant still lives in the rental unit. Rent in the amount of \$995.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$497.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a studio apartment in a 3-storey apartment building, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on October 16, 2020 the tenant was served with a One Month Notice to End Tenancy For Cause (the Notice), by posting it to the door of the rental unit. A copy of the Notice has been provided as evidence for this hearing and it is dated October 16, 2020 and contains an effective date of vacancy of November 30, 2020. The reasons for issuing it state:

- 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 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;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Two people are currently occupying the rental unit, who are not listed as occupants or tenants in the tenancy agreement. They have been there since September, 2020 without the landlord's permission, and have identified themselves as family members or friends to the landlord's agent as well as to the building manager and the cleaner. Since the tenancy began there have been multiple occasions of people claiming to be friends or relatives, who seek access to the building by knocking on the front and back doors of the building and calling out to the tenant to open the door or throw down a key, or by throwing rocks at the tenant's window to get her attention. Further, the tenant has given keys to the additional 2 occupants, and other people also have keys to the front access to the building. Some have been sleeping in hallways, and in the mornings

when the cleaner and resident manager find them, they wake them and ask them politely to leave. They all claimed they were friends or relatives of the tenant.

On multiple occasions the tenant and visitors have been partying and smoking and doing intravenous drugs. The landlord retains a pest control company as a preventative pest control measure, and the tenant has not allowed access to the rental unit. On one occasions the landlord's agent discovered that the tenant or guests have changed the lock to the rental unit. Guests of the tenant also knock on doors of other tenants to ask for money or other household items, often late at night. When guests attempt to enter and get no response, they throw rocks to get the tenant's attention, and 2 windows have ben broken.

With respect to illegal activity, the landlord's agent testified that he goes to the 2nd floor routinely and has smelled a heavy odor of smoking coming from the rental unit and found 5 people in there, including the tenant, using drugs intravenously and smoking with the door of the rental unit open.

With respect to extraordinary damage, the landlord relies on the testimony that 2 windows have been broken.

Smoking is prohibited under Section 10 of the tenancy agreement, and copies of letters to the tenant about smoking have been provided as evidence for this hearing.

The landlord's witness testified that the landlord's agent manages 3 other properties, and the witness is the director of property management, and has worked in the rental property for 5 years. The witness is the supervisor of the landlord's agent.

The witness referred to the evidentiary material, and testified that there have been 13 breaches starting on May 21, 2020 and up to November 27, 2020.

The tenant's social worker has admitted that the tenant doesn't live in the rental unit, but gave keys to 2 other people. The landlord is losing good tenants due to the tenant's guests who are not listed in the tenancy agreement and don't have permission to live there. Three other tenants have given their notices to end their tenancies due to disturbances from the tenant's friends, treating the unit as a "frat house."

The landlord seeks an Order of Possession as soon as possible.

The tenant's agent testified that the tenant has struggles, and lived on the street for a long time and knows a lot of people.

The tenant's agent has spoken to the building manager about concerns that the tenant had, such as saying that someone broke the window. There's 1 window in the suite. Further, the tenant found fake outlets in walls that can be pulled out. The tenant became very paranoid and had others stay with her.

Since the tenant has been in the hospital and in treatment, the tenant didn't want the rental unit to be empty, so others have been staying there. The tenant's agent does not know who changed the locks, but the tenant advised there was a problem with the door.

The tenant's agent spoke to the previous building manager asking for time to work with the tenant, but was advised that she was going to issue a notice to end the tenancy. Two weeks prior to the Notice being issued, the tenant's agent passed on a message from the tenant that if the previous building manager thinks people are going in and has it on video as she stated, provide the video.

The tenant suffers from mental illness and wanted to speak to the previous building manager, who was not willing to meet with the tenant, which was frustrating to the tenant. The tenant felt she was being judged and put in a box, having been targeted before. The current occupants are friends who don't live there but are looking after the tenant's home. The tenant has a big heart and one of the occupants is homeless, but not the other. The tenant's agent has been looking for a place for the tenant with assisted living.

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 reasons for issuing it are in dispute.

I have reviewed all of the evidentiary material, including breach letters and warnings, and considering the testimony of the parties, I am satisfied that the tenant has allowed an unreasonable number of occupants in the rental unit. I am also satisfied that the landlord has established significant interference and illegal activity. In the circumstances, I find that the landlord had cause to issue the Notice, and I dismiss the tenant's application to cancel the Notice.

The *Residential Tenancy Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. I have reviewed the One Month Notice to End Tenancy For Cause and I find that

it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: January 05, 2021

Residential Tenancy Branch