



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.

The tenant and an agent for the landlord attended the hearing; each gave affirmed testimony and the landlord called 3 witnesses who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The hearing did not conclude within the time scheduled and I adjourned the hearing to continue later in the day.

No issues with respect to service or delivery of documents or evidence were raised at the commencement of the hearing.

Issues to be Decided

Has the landlord established that the One Month Notice to End Tenancy For Cause was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent is a property manager, and testified that this fixed-term tenancy began on January 8, 2018 and reverted to a month-to-month tenancy after July 31, 2018, and the tenant still resides in the rental unit. Rent in the amount of \$645.00 was payable on the 1st day of each month, which has been increased over time and is now \$675.00 per 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 \$322.50 as well as a pet damage deposit in the amount of \$150.00, both of which are still held in trust by the landlord. The rental unit is an apartment in a complex containing 20 units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on October 14, 2020 the tenant was served with a One Month Notice to End Tenancy For Cause (the Notice) by personally handing it to the tenant. A Proof of Service document has been provided for this hearing stating that a person served the Notice personally and was witnessed by the landlord's agent. A copy of the Notice has also been provided for this hearing and it is dated October 14, 2020 and contains an effective date of vacancy of November 30, 2020. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - 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:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord.

The "Details of Cause(s) section states: "Our office has received several complaints of drug dealings out of this unit. Complaints from multiple neighbors and construction workers. There is also a lot of loud screaming matches happening at this unit often."

With respect to the first reason for issuing the Notice, the landlord's agent testified that there's a lot of less desirable individuals in the rental unit putting the landlord's property at risk, who are in and out all day. The tenant has been dealing and doing drugs in the unit. Neighbours have complained, and the landlord's agent sat in the parking lot and watched it now and then. The landlord's agent witnessed people walk off the street and into the rental unit and they'd be there 1 to 5 minutes and leave. The landlord's agent went there 3 different dates, during different times and it was constant. One neighbour moved out, who said that the neighbour couldn't take it due to the constant traffic late at night and gave the landlord's agent a video, which has not been provided for this hearing. Also, a construction worker told the landlord's agent that there is a drug dealer and said that traffic in and out of the rental unit was "unreal" and that he had witnessed it.

With respect to the illegal activity, the landlord's agent testified that it's not quiet and other tenants have complained. No written notice was given to the tenant, but the landlord's agent has telephoned the tenant and told the tenant what's been heard, but the tenant denied any such activity, even when told that the landlord's agent watched the video. The activity has jeopardized a lawful right or interest of other occupants who don't have quiet enjoyment. Four letters from other tenants have been provided for this hearing, complaining to the landlord about activity in the rental unit, yelling, frequent visits by police, cars and people coming and going continuously all day every day, and concern for safety.

The landlord's first witness (SD) testified that he is part owner of the rental complex. He spoke at length with a construction worker and was told that the residents of units 3 and 7 were dealing drugs, and there was a constant stream of traffic in and out, as well as shouting.

The witness inspects the rental units at least 2 or 3 times per year and quite often would hear about issues with the same 2 rental units; people concerned about the hostile environment; the tenant has had confrontations with some other tenants, including shouting matches, noise and the constant stream of traffic. The witness believes that the tenant is dealing drugs. The landlord was successful in obtaining an Order of Possession for the other rental unit around December 23, 2020. The witness spoke to the tenant about it in March, 2019, and again in September, 2020. The witness told the tenant that if she didn't cease traffic and stop associating with the tenant in #7, she would also be given a notice to end the tenancy. Early in December, 2020 the RCMP had a warrant to arrest the tenant who had been living in #7, and police found him hiding in this rental unit.

The landlord's second witness (JC) testified that he is a previous tenant of the rental complex and moved out mostly due to drug related issues and drug traffic. The witness saw the drug trafficking mostly in unit #7 but also in unit #3 and made complaints to the landlord. The witness also took photographs in the summer of 2020 and moved out of the building on November 1, 2020.

The landlord's third witness (DD) testified that she is the owner and managing broker of the property management company.

The witness saw a lot of activity around the rental unit. On several occasions, the witness has parked near the rental unit, and several times a car would pull up, someone would run into the rental unit and leave again. The witness called the tenant about 2 or 3 months ago specifically asking that the tenant stop having people coming in and out and that others were concerned about confrontations. The tenant yelled, screamed, swore and hung up on the witness.

The witness has seen the photographs provided by the landlord for this hearing, and testified that they were taken near the tenant's rental unit.

The tenant testified that she is a good tenant, quiet, getting old and does not socialize. No one lives with the tenant, and the tenant does not drink or do drugs or engage in any illegal activity. The traffic alleged by the landlord is not true. The tenant knew the tenant who previously lived in #7, but that does not make the tenant a bad person.

The tenant further testified that the photographs of the landlord are not around the tenant's apartment. Some are taken at the far end of the complex, the one with the man and woman are taken on the street. The parties had a hearing on January 18, 2019, and photographs 3, 4 and 5 were used as evidence in that case. The photographs marked 6, 7 and 8 are not near the tenant's apartment; 9, 10, 11 and 12 are in the middle of the complex and the tenant doesn't know the people in the photographs. Photographs 15, 16 and 17 are of people on the road, and the tenant doesn't know what that has to do with the tenant.

The landlord says that the tenant has been aggressive but only brought that up in the last couple of weeks. Rent is paid and the tenant wishes there could be some communication.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord's agent has been watching for the last year and 2 of the photographs were taken in January, 2020. The people on the street had been in the tenant's rental unit. The neighbours say that the traffic is constant. The owner has not been at the rental complex every day since December 8, 2020; only on December 21, 2020 and January 12, 2021 when an inspection was completed.

SUBMISSIONS OF THE TENANT:

There has been no communication. The tenant doesn't answer the phone when the owner calls because he's rude and told the tenant that if she hangs up, she will be evicted. The tenant hung up and 30 minutes later received the notice to end the tenancy.

The tenant has not received the landlord's photographs marked 1 and 2.

The owner has been at the complex every day restoring a unit that had a fire. The tenant asked him if he saw people going into the tenant's home and he replied that he did not.

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 the One Month Notice to End Tenancy For Cause (the Notice), and I find that it is in the approved form and contains information required by the *Act*.

I do not consider photographs that were taken 2 years ago to be evidence of cause to evict a tenant. It is not clear to me which of the photographs may be recent, and the tenant advised during her submissions and testimony that photographs marked 1 and 2 by the landlord were not served to the tenant. I have also reviewed all of the written complaints provided by the landlord, however only one of them is dated. It is dated January 7, 2021, well after the Notice was issued. One of the witnesses testified that he took photographs in the summer of 2020, but did not specify which ones. Given that some of the photographs were taken 2 years ago, I am not satisfied that the letters were not provided to the landlord 2 years ago as well.

In order to be successful, the landlord would be required to establish that as of the date the Notice was issued, the tenant had engaged in illegal activity and had put the landlord's property at significant risk, and that those reasons caused the landlord to issue the Notice.

The tenant testified that witness (DD) told the tenant during a phone call that if the tenant hung up the telephone, the landlord would serve a notice to end the tenancy, and 30 minutes later the tenant was served. I find it just as likely, considering the evidence and testimony, that that was the reason for issuing the Notice. That is not a reason provided for in the *Act*, and therefore, I cancel the Notice.

Conclusion

For the reasons set out above, the One Month Notice to end Tenancy for Cause dated October 14, 2020 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: January 19, 2021

Residential Tenancy Branch