



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On November 21, 2020 the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking to cancel a One Month Notice to End Tenancy for Cause dated November 9, 2020 ("the One Month Notice").

The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

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.

Issue to be Decided

- Does the Landlord have sufficient cause / reason to end the tenancy?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on May 1, 2020 as a one-year fixed term tenancy. Rent in the amount of \$1,705.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$852.50.

The Landlord served the One Month Notice to the Tenant using registered mail. The Notice has an effective date (the date the Tenant must move out) of December 31, 2020.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on November 21, 2020, within the required time period.

At the start of the hearing the Landlord provided testimony on the reasons why the tenancy should end. The Landlord testified that the Tenant breached the tenancy agreement. In addition, the Landlord testified that the Tenant has unreasonably disturbed other occupants of the residential property.

The Landlord testified that the Tenant is running a tattoo business out of the rental unit. The Landlord also provided testimony that police have been at her unit frequently and the Landlord has received complaints from other occupants about her.

The Landlord testified that Schedule A of the tenancy agreement provides that the rental unit is for residential purposes only. The Landlord provided a copy of Schedule "A" Rules and Regulations which provides that the Tenant must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial, political, or business purposes.

The Landlord stated that the Tenant was given a breach type letter, warning the Tenant that she cannot run a tattoo parlor out of the rental unit and asking the Tenant to cease immediately. The Landlord provided a copy of a warning letter dated September 9, 2020.

The Landlord provided a copy of an email complaint received from B.K. on September 5, 2020 indicating that the Tenant is running an unlicensed tattoo shop out of the

apartment. The Landlord provided a copy of the email complaint which includes photographs of the tattoo shop.

The Landlord provided a copy of an email complaint received from D.W. on September 21, 2020 asking why there is still an active tattoo shop in the apartment.

In response to the Landlord's submissions about her operating a business from the rental unit, the Tenant testified that she was not running a tattoo shop at the rental unit. She testified that she had her tools at the unit, and she had friends come over and she would tattoo herself, and one of her friends. She testified that starting October 2020 she rented a room at the back of a salon and worked out of there. She testified that in October 2020, she informed the Landlord that she is not tattooing in her rental unit. She testified that as soon as she was warned by the Landlord she stopped, and she has not tattooed in the unit since.

In response to the Landlord's concern about unreasonable disturbances to other occupants of the rental property, the Tenant testified that the police attended her unit twice due to a domestic dispute and she has now ended that relationship. She testified that D.W. the author of some of the complaints made to the Landlord is her ex husband who is harassing her.

In reply, the Landlord provided testimony acknowledging that the Tenant could have been tattooing friends in the unit.

The Landlord testified that he continued to get complaints after the breach letter was issued. The Landlord provided a copy of an email complaint received from B.K. on November 6, 2020 complaining about the presence of an illegal tattoo shop and behavior of the Tenant and property damage and crime on the residential property. The author indicates they need to move to a safer condo/ apartment.

The Tenant testified that B.K. is an alias of her ex-husband.

The Landlord was asked whether he could confirm that B.K. is a tenant living at the residential property and the Landlord was unable to confirm this. The Landlord stated that B.K. could be a roommate of a tenant living on the property.

Analysis

Residential Tenancy Branch Policy Guideline #8 Unconscionable and Material Terms is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides the following:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

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.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

In the matter before me, the Landlord has the burden to prove that the reasons for ending the tenancy are sufficient and valid. Based on the evidence and testimony before me, I make the following findings:

I find that Schedule A of the tenancy agreement contains a term that the Tenant must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial, political, or business purposes. I find that running a tattoo shop from the rental unit is not permitted and would constitute a breach of a material term of the tenancy agreement.

On the issue of whether or not the Tenant breached a material term of the tenancy agreement by running a tattoo shop, the Tenant testified that she was not running a shop, rather she was tattooing herself and one friend. The Landlord conceded that the Tenant could have been tattooing friends in the rental unit. I find that tattooing a friend in the unit does not rise to the level of operating a business. I find that there is

insufficient evidence from the Landlord that the Tenant was operating a business out of the unit.

Further to whether or not the Tenant was operating a business out of the unit, the Tenant testified that she stopped tattooing from the unit altogether after receiving the Landlord's warning letter. It appears that the alleged behavior ceased after the Tenant received the warning/ breach letter. I give very little weight to the complaint letter dated November 6, 2020. The Landlord could not confirm that it came from an occupant of the rental property, which lends support to the Tenant's submission that it came from her ex-husband who is allegedly harassing her.

I find that the Tenancy is not ending due a breach of a material term of the tenancy agreement.

With respect to unreasonable disturbances to others living in the rental property, I find that the Landlord did not witness/ observe any disturbances himself. The Landlord testified that he received written complaints. Other than the copies of email complaints documented in this decision, the Landlord did not provide any other documentary evidence of written complaints from other occupants of the rental property. The Tenant acknowledged a domestic dispute involving police that appears to now be resolved.

I find there is insufficient evidence from the Landlord to support ending the tenancy due the Tenant significantly interfering with or unreasonably disturbing another occupant or the Landlord.

The Landlord's One Month Notice to End Tenancy for Cause dated November 9, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one future rent payment.

Conclusion

I find there is insufficient evidence from the Landlord to support ending the tenancy due to a material breach of the tenancy agreement and/or the Tenant significantly interfering with or unreasonably disturbing another occupant or the Landlord.

The Landlords One Month Notice to End Tenancy for Cause dated November 9, 2020 is cancelled. The tenancy will continue until 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: February 16, 2021

Residential Tenancy Branch