



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PSF, OLC**
 PSF, CNC, AAT, LRE, OLC

Introduction

This hearing dealt with the tenant's two applications filed pursuant to the *Residential Tenancy Act* (the "*Act*").

The tenant's first application dealt with:

- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

The tenant's second application dealt with:

- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62;
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- An order to allow access to the tenant or their guests pursuant to section 30;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged being served with the tenant's first application but denies being served with the tenant's second application. The landlord testified she was unaware the tenant had filed an application to dispute the One Month Notice to End Tenancy for Cause.

The tenant testified that he had been confused by the dispute resolution process, but that in the package sent to the landlord, **both** Notices of Dispute Resolution Proceedings were sent. The landlord had filed multiple notices to end tenancy against him and he's had difficulty in keeping the dates straight.

The landlord was given the opportunity to consider an adjournment request made by the tenant. The landlord was advised that if the application were to be adjourned, the tenancy would continue, pending the future hearing date. The landlord remained steadfast in her assertion that the second Notice of Dispute Resolution Proceedings was not sent to her, however she conceded that she would be willing to have the merits of the tenant's application heard rather than being adjourned to a future date. The issue of whether the landlord's notice to end tenancy would be upheld or cancelled was the focus of the hearing before me.

At the commencement of the hearing, I advised the parties that since the primary issue to be determined was the notice to end tenancy, the remainder of the tenant's applications would be dismissed with leave to reapply pursuant to rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure, as they were not sufficiently related to the primary issue.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled or upheld?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following testimony. The landlord lives in the upper unit of a single family home with a basement unit below. The tenant is one of three tenants who live in the basement unit, each under separate tenancy agreements.

A copy of this tenant's tenancy agreement was provided as evidence. The fixed tenancy began on October 1, 2020, set to end on January 1, 2021. Rent was set at \$600.00 per month payable on the first day of each month. A security deposit of \$300.00 was collected by the landlord which she continues to hold. An addendum to the tenancy agreement was signed by the parties and the landlord points out clause 3 of the addendum which reads,

"Guests are permitted overnight for not more than 3 consecutive nights without permission from the other tenants, and for not more than 7 consecutive nights without permission from the landlord".

The landlord testified that she served the tenant with a One Month Notice to End Tenancy for Cause on December 30, 2020 with an effective date of January 1, 2020. (error in year noted). She later testified that this was an error; the tenant was served on November 30, 2020 and acknowledged that it had to be the end of November or else she was not giving the tenant a full month's notice to end the tenancy. The method of service was by posting to the tenant's door.

A copy of the first two pages of the notice to end tenancy were provided as evidence. It is (erroneously) dated December 30th and is signed by the landlord. The landlord provides two reasons for ending the tenancy.

- the tenant has allowed an unreasonable number of occupants in the unit/site;
- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlord testified that one of the tenants living alongside this tenant in the basement suite provided a written statement. This tenant was not called as a witness by the landlord and the contents of the statement were not elaborated upon by the landlord. The landlord testified that the tenant/applicant in this proceeding had his girlfriend in the unit as a guest frequently and regularly without permission from the other tenants or from the landlord. This additional guest causes the landlord's hydro bills to go up and causes additional stress for the remaining tenants living alongside this tenant. The tenant's frequent overnight guest is a violation of clause 3 of the tenancy agreement.

The landlord testified that the tenant and his guest significantly disturb the other two tenants living alongside him. The other tenants have provided the landlord with texts describing the tenant's fights with his girlfriend. They are loud, aggressive and violent. The landlord cites an incident included in one of the other tenant's written submission,

however concedes that this incident happened after the notice to end tenancy was given to this tenant.

The third page of the notice to end tenancy was not provided as evidence, so the landlord read the “details of cause” to me during the hearing. According to the landlord, the tenant was given warnings of violating the addendum signed at the beginning of the tenancy. There were late payments of rent. Disturbing another tenant or the landlord (no dates cited). One inapplicable reason, and lastly for breaking the addendum regarding a guest staying more than 3 consecutive nights without the permission of the remaining tenants or the landlord.

The landlord testified that one of the remaining tenants living alongside this tenant doesn’t feel safe for his well being or his belongings. He has anxiety and has advised the landlord that may not want to remain living in the rental unit if this tenant remains. Out of respect for the other occupants, this tenant needs to seek the permission from them for his guest to stay overnight frequently.

The tenant gave the following testimony. The term restricting guests is illegal. There should be no guest restriction. He didn’t sign the addendum and it goes against the Residential Tenancy *Act* in any event. The landlord does not have any right to enforce how many guests are allowed or how long they can stay.

This tenant and one of the other tenants have similar schedules, staying up late. The third tenant has a different schedule but all three try to respect each other. This tenant has moved his tv to the other side of his bedroom to alleviate noise for the other occupant. The tenant plays video games with his headphones on and sometimes gets carried away while playing – often using foul language and acting out. If the other occupant would move his bed to the other side of his room, it would be quieter for him.

Analysis

The tenant was served with the Notice on November 30, 2020 and filed his application to dispute it within the 10-day time frame allotted by section 47 of the *Act*, on December 2, 2020.

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. In the matter at hand the landlord must demonstrate the tenant has allowed an unreasonable number of occupants in the

unit/site or that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

To support her allegation of the tenant allowing an unreasonable number of occupants in the unit, the landlord refers to clause 3 of the tenancy agreement addendum. I find, however, that this clause directly contravenes the standard term of the tenancy agreement which states at clause 11:

11. OCCUPANTS AND GUESTS

- 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 on 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 through dispute resolution under the *Residential Tenancy Act*.

Section 14(1) of the *Act* states that a tenancy agreement may not be amended to change or remove a standard term.

While it is understandable that the landlord seeks to maintain quiet enjoyment for three unrelated adult tenants living under a shared roof, the landlord does not have the authority to impose a guest restriction upon any of the tenants as set out in clause 11 of the standard terms of the tenancy agreement. The landlord is also barred from changing terms of the tenancy agreement by section 14 of the *Act*. As the guest restriction contravenes the standard term of the tenancy agreement, I find it to be unenforceable.

The parties agree that the rental unit has 3 separate bedrooms, each occupied by a different tenant. With the addition the tenant's frequent houseguest, it is understandable that the unit may feel crowded however does that translate to an unreasonable number of occupants? I do not find sufficient evidence has been provided by the landlord to satisfy me that it does. Each of the tenants living together under the separate tenancy agreements understood that the accommodations were shared by others and it is reasonable that one or more of the other occupants would have guests visiting from

time to time. The landlord has provided evidence of a single guest hosted by the tenant. I do not find the tenant violated the *Act*, regulations or tenancy agreement by allowing an unreasonable number of occupants. This reason for ending the tenancy is dismissed.

The second reason for ending the tenancy was for a significant interference or an unreasonable disturbance to another occupant or the landlord. The landlord cited two instances of disturbing another occupant, both of which happened after the landlord issued the notice to end tenancy. The first was for an alleged disturbance where the tenant's guest accused the tenant of hitting her in the head with a golf ball and the second was for bear mace being used in the unit. As I advised the parties during the hearing, only events leading up to the issuance of the notice to end tenancy on November 30th could be used to corroborate the reasons for ending the tenancy. As the landlord did not supply sufficient evidence, supported by specific events or instances of disturbance, I cannot reasonably conclude that the tenant significantly interfered with or disturbed another occupant or the landlord. This reason for ending the tenancy has not been substantiated and as a result, I dismiss this reason for ending the tenancy.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The remainder of the tenant's Applications for Dispute Resolution are dismissed with leave to reapply.

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 23, 2021

Residential Tenancy Branch