



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jabs Group of Companies and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The tenant was also accompanied by an Advocate. The parties also each called 1 witness, who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

The hearing did not conclude in the time allotted and was adjourned to later in the day for closing submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that more time than prescribed should be permitted to dispute a notice to end the tenancy?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this month-to-month tenancy began on July 1, 2006 and the tenant still resides in the rental unit. Rent

in the amount of \$715.00 was originally payable on the 1st day of each month, which has been increased over time and is now \$903.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$357.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on April 16, 2021 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by registered mail. A copy has been provided for this hearing and it is dated April 16, 2021 and contains an effective date of vacancy of May 31, 2021. 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Numerous people stayed in the rental unit during the months of March and April, 2021. The building manager confronted them and they said that the tenant gave them permission to be there. On April 5, 2021 the landlord sent a letter by mail to the tenant about people moving in, which also stated that approval was required, and that it was a breach of a material term of the tenancy agreement. A copy of the letter was also posted to the tenant's door and a copy has also been provided for this hearing. On April 8, 2021 the tenant called the landlord and stated that he had received the landlord's letter and that the other people would move out immediately. The tenant also advised that he had been in hospital for much of February through April. The landlord told the tenant that he would inspect the rental unit the following week and that another letter had been posted to the tenant's door about noise disturbances. The tenant's sister was assisting the tenant and said she would be giving the tenant his mail.

On April 16, 2021 at 9:30 a.m. the building manager and maintenance person went into the rental unit, finding 4 occupants living there and they refused to leave. Two were incoherent and would not respond. The tenant was not there, and police were called. Paramedics and police arrived, who told all occupants to leave and the tenant's nephew was arrested, although the landlord does not know why. As he was being arrested, he told the other people he'd be back in a few hours, but he did not have permission to live there. Police took the keys from him, and the landlord intended to give them to the

tenant. The paramedics checked out the incoherent people; they were okay and were told by police to leave. Damage was also noted to the walls in the rental unit.

Later that day the building manager called the landlord saying that the tenant's nephew was banging on her door wanting the keys back. A police officer came back and spoke with the tenant on the phone, and the tenant advised to give the keys back to the occupants, and the police did. As soon as that happened, all occupants came back and the noise continued.

It's constant traffic with different people all the time. Written complaints from other occupants in the building have also been provided for this hearing. The landlord testified that other occupants are afraid or reluctant. The complaints from other occupants include noise, climbing on the fence, trying to get into the building, frequent smoking, guests often staying for long periods of time, not wearing masks, leaving the suite door wide open with people coming and going and talking about doing drugs. One tenant wrote that their home is not a safe place and that they would be moving out at the end of April, 2021, and they did. Another says that they will be looking for a new apartment if something is not done immediately. The landlord is losing tenants as a result of the tenant's guests and behaviour.

On June 14, 2021 the tenant called the landlord and apologized for the noise, but also said he's been there for 14 years and wasn't going to leave.

The landlord's witness testified that she has been the building manager within the rental complex for about 5 ½ years.

The witness was first aware early in March, 2021 that people were moving into the rental unit, although the tenant was not there at the time. The witness approached the tenant's sister and nephew indicating that they were not allowed to move in.

Generally, it was reported to the witness that other people were continuing to move in. They didn't have keys and tried to gain access through another apartment but were denied. They began making a commotion in the hall trying to reach someone about keys to the tenant's apartment. On Easter Monday they started moving in and were told that they couldn't but they continued to move in.

The witness had regularly received voice mails and text messages that noise, music, fighting, shouting and activity on the balcony, including smoke was unbearable. Four tenants surrounding the tenant's unit were regularly complaining to the witness about those issues.

The witness posted a notice on the door of the rental unit about inspecting. On April 16, 2021 the witness went into the rental unit and saw 4 occupants who were removed by police. The witness received a voice message that they wanted back into the apartment and the witness was not willing to give them keys, but would allow them to retrieve their possessions. The witness refused to leave her apartment until police arrived, who retrieved the keys. However, the tenant told police he wanted his sister to have the keys, and police said that's as far as their jurisdiction would go. The tenant's sister, nephew and at least 2 other people went back in. Disturbances, music and smoking then continued.

The tenant testified that he had brain surgery twice; 4 ½ hours the first time and 2 hours the second time. As a result the tenant suffers great headaches and his memory is not good, which was also the case during this time period; there's no compensating for it. The tenant invited some people to go in and clean the rental unit, but they cleaned out the tenant, taking everything of value. The tenant reported the theft to police, but does not recall when.

The tenant has no knowledge of the letters sent by the landlord dated April 5 and April 8, 2021, nor any recollection of calling the landlord on April 8 stating that he had received the April 5 letter. The tenant also testified that he does not remember talking to the police on April 16 or any recollection of giving permission to guests to go back into the rental unit. The tenant does remember some of the conversation regarding an apology to the landlord and statement that the tenant was not going to leave.

The tenant's witness testified that she is the tenant's sister and has been assisting the tenant with his tenancy and his situation, including while the tenant was ill and in the hospital.

The tenant was diagnosed with a brain tumor in February, 2021. The tenant was in hospital on March 2, 2021 and had surgery on the 4th, leaving hospital on the 12th. The tenant was re-admitted to hospital on March 27 and had a second surgery. The witness wasn't able to get any information from the doctors due to COVID-19.

After the first surgery the tenant asked a friend and her daughter to help out with things, and then about a week later the friend asked if another person could assist because it was overwhelming. The tenant was home for about a week before being re-admitted; the doctor kept the tenant in hospital due to an infection and it wasn't safe for the tenant to return home without assistance. The witness had no idea how long the tenant would be in hospital, but the friend and other person remained at the apartment.

The witness further testified that there was so much going on and she saw about 5 notices from the landlord. The witness emailed 2 of the first ones to the Health Authority, but was powerless to get people out of the rental unit, despite the witness asking them to leave. They said the tenant permitted them to be there, and the witness didn't have any authority.

The first friend and her daughter left, and then the witness obtained a fake Power of Attorney and on April 19 showed it to the other person and he left about 3 days later. The witness also told him that the Health Authority would be inspecting the rental unit as an added measure to make sure he would leave. The Health Authority doesn't have a place for the tenant, and hospice is only for a month.

SUBMISSIONS OF THE LANDLORD:

The landlord sent a letter to the tenant and posted it on the door of the rental unit. On April 8, 2021 the tenant called the landlord acknowledging receipt of the April 5 letter and said the guests would be leaving. The tenant was advised that the landlord would be there the following week to ensure they were gone, and if not, the landlord would issue a notice to end the tenancy. The landlord also told the tenant that another letter would be sent.

The tenant did not call the police. When police called the tenant on April 16, and the keys were in the landlord's possession, the tenant told the officer to give the keys to the tenant's sister. Neither the tenant nor his sister took reasonable steps to rectify the situation even after April 16 and noise disturbances continued.

The situation is not fair to other tenants in the complex, and others have left because of the tenant's guests.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

Based on the testimony of the tenant and his sister, while the tenant did invite persons to stay in the suite for day-to-day activities, the tenant was not aware how long he'd be in hospital and did not intend for the people to stay for an indeterminate amount of time.

Neither the tenant nor his sister is sure whether or not the landlord's April 5, 2021 letter was received, and the landlord knew the tenant was in the hospital, but didn't try to serve the tenant there. The building manager testified that the notice was put on the door of the rental unit, but the tenant would not have received it and nothing is included in the evidence that specifies the date and time of the inspection. Therefore, it cannot

be deemed to be served or when. The tenant and his sister took action within a reasonable time to ensure the tenant's friends left the suite by April 23, 2021.

This is a unique situation, a 15 year tenancy and given his health and assistance required, there is no denying on his part that people were acting poorly and irresponsibly but the tenant and his sister took the steps necessary to address situation as they found out about it.

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, 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*. The reasons for issuing it are in dispute:

- 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

It is not for me to decide what has happened since the Notice was issued or what may happen in the future, but whether or not the landlord has established cause as set out above at the time that the Notice was issued. The tenant disputed the Notice on May 17, 2021, and I find that the time to dispute it expired on May 1, 2021. No evidence was lead with respect to the reasons for filing the Application later than the date permitted by the law.

I have reviewed all of the evidentiary material, and I accept that the tenant has some memory loss as a result of his medical condition, and I accept that as a reason for requiring more time that prescribed to dispute the Notice. Therefore I must also accept that the tenant may not recall receiving the April 5 or April 8, 2021 letters from the landlord. In order to end a tenancy for breach of a material term of the tenancy agreement, I must be satisfied that the tenant was given written notice of the breach and a reasonable time to correct it. The landlord issued the Notice on April 16, 2021; 8 days after the last letter, which I find is not a reasonable amount of time to correct the breach considering that the landlord knew the tenant was in hospital.

I also consider the landlord's testimony and evidentiary material indicating that other tenants have left or will be leaving their tenancies as a result of the unreasonable number of people in the rental unit and the noise and disturbances. I accept the landlord's submission that it is not fair to other tenants in the complex, nor is it fair to the landlord.

In the circumstances, I find that the tenant has allowed an unreasonable number of occupants in the rental unit, and that the tenant or persons permitted on the property by the tenant has significantly interfered with and unreasonably disturbed other occupants. I find that the landlord had cause to issue the Notice, and the tenant's application to cancel it is dismissed.

The *Residential Tenancy Act* states 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. Having found that it is in the approved form, 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.

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: August 04, 2021

Residential Tenancy Branch