



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Prestige Realty, Sutton Group - 1st West Realty and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, CNL, RP, FFT, CNC**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49;
- An order for regular repairs pursuant to sections 32 and 62;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72; and
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

The tenant SM attended the hearing and was represented by his counsel, LB. The landlord was represented at the hearing by her agent/son, QN and her counsel, WW. As both parties were present, service of documents was confirmed.

The tenant submits that the corporate landlord who issued the Two-Month Notice to End Tenancy for Landlord's Use was served with the Notice of Dispute Resolution Proceedings package on July 22 by registered mail. The amendment was sent by registered mail on September 03, 2021. Tracking numbers for both mailings were provided as evidence by the tenant. I deem the corporate landlord served with the Notice of Dispute Resolution Proceedings five days after mailing, on July 27, 2021 in accordance with sections 89 and 90 of the *Act*.

Preliminary issues

The landlord acknowledged service of the tenant's Application for Dispute Resolution and amendment. The landlord also acknowledged being served with the tenant's evidence provided up to 14 days prior to the hearing however the landlord disputes the admission of evidence filed with the Residential Tenancy Branch and served to him on October 26th, namely a Freedom of Information result from the city bylaw office.

I note Rule 2.5 states that copies of all documentary and digital evidence to be relied on in the proceedings is to be submitted at the same time the application is submitted. Pursuant to rule 3.17, the arbitrator has the discretion to determine whether to accept evidence not provided to the other party or the Residential Tenancy Branch in accordance with Rule 2.5. I determined that the tenant had the opportunity to seek the information obtained in the freedom of information request immediately upon filing his Application for Dispute Resolution and neglected to do so in a timely manner. As such, the single piece of evidence was excluded from consideration in this decision.

The tenant acknowledged service of the landlord's evidence provided to him on October 25th, the 7th day before the hearing. Tenant's counsel disputed the admission of the landlord's evidence, stating that it was not provided to him "as soon as possible" even though it was provided not less than seven days before the hearing. The landlord's evidence was served contrary to Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, ("Rules") argues tenant's counsel. He argues that he sent opposing counsel many requests for document disclosure prior to the deadline for the exchange of evidence under the Rules.

While the landlord's exchange of evidence may not have been immediate or made available to opposing counsel the moment it was obtained, I find it was provided within a reasonable time frame. I determined that the landlord's evidence was served on the tenant within the timeframe required by Rule 3.15 of the Rules and as such, the landlord's documentary evidence was not excluded.

Tenant's counsel sought an adjournment of the hearing based on the inclusion of the landlord's evidence and for the opportunity to obtain a freedom of information report from the RCMP. Tenant's counsel submits that he only came on to this file recently after the previous lawyer left his firm. The previous counsel did not seek the request for information from the RCMP. I determined that the adjournment was predicated on the neglect of tenant's counsel to gather information as soon as possible in anticipation of the hearing and that the adjournment would not be granted.

Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure (“Rules”) allow an arbitrator to consider whether issues are related and if they would be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. I determined the issues of whether the notices to end tenancy would be upheld or cancelled were of primary concern for this hearing and that the remainder of the issues were unrelated. As such, only the issues of whether I would uphold or cancel the landlord’s Two Month Notice to End Tenancy for Landlord’s Use and One Month Notice to End Tenancy for Cause were considered for this hearing. The remainder of the issues identified in the tenant’s Application for Dispute Resolution Proceedings Package were dismissed with leave to reapply.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be upheld or cancelled?
Should the Two-Month Notice to End Tenancy for Landlord’s Use be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, 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’s agent/son gave the following testimony regarding the Two-Month Notice to End Tenancy for Landlord’s Use. He is the landlord’s son and he just finished college in Toronto. If the tenant leaves the house, he would move in “for sure”. No documentary evidence regarding the Two-Month Notice to End Tenancy for Landlord’s Use was provided, and tenant’s counsel submits that he was not retained to *Act* for the landlord regarding this notice to end tenancy. Landlord’s counsel was only retained to deal with the One Month Notice to End Tenancy for Cause.

Landlord’s counsel gave the following submissions. The rental unit is a big house with a swimming pool located in an upscale neighbourhood. The unit is an investment

property and the landlord does not ever go to see it because she lives overseas. Rent for the property is set at \$4,000.00 per month and is currently being rented on a month to month basis after the initial one year fixed term ended.

A copy of the One Month Notice to End Tenancy for Cause was submitted as evidence. The parties agree it was served on August 24, 2021 by posting to the tenant's door, and the tenant filed to dispute the notice on August 30, 2021. The reasons for ending the tenancy are:

1. the tenant has allowed an unreasonable number of occupants in the unit/site;
2. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
4. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
5. the 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;
6. the 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;
7. tenant has assigned or sublet the rental unit/site without landlord's written consent

According to landlord's counsel, the gist of the landlord's reasons for ending the tenancy is because the neighbours are all "up in arms" over the tenant's use of the premises to host wild parties whereby the guests are seen naked, fighting, consuming illicit drugs and being loud. Counsel alleges the tenant charges admission to the parties and the parties may be "sex parties". Further, the neighbours told the landlord that the tenant has been taking in renters and commercially fixing vehicles as a business.

The landlord submits that the tenant has breached clauses 36 and 37 of the tenancy agreement which states:

(36). USE OF PREMISES:

The rental premises are supplied for residential use and not to be used as a shop or for business purposes.

(37). CRIME FREE HOUSING:

The tenant(s), any member of the tenant(s) household, and any persons invited onto the residential property or residential premises by the tenant(s) or any

member of the tenant's family shall not engage in any criminal activity on the premises or property including, but not limited to:

- (a) any drug related activity
- (b) solicitation (pimps, prostitution activity)
- (c) street gang activity
- (d) assault or threatened assault
- (e) unlawful use of a firearm
- (f) any criminal activity that threatens the health, safety or welfare of the Landlord, other tenants on the residential property or residential premises.

Counsel for the landlord acknowledges that there have been no criminal charges laid against the tenant or any of his guests and that the tenant has not been subjected to any bylaw offence fines. However there have been dozens of complaints made to the RCMP and bylaw officers regarding the tenant. The RCMP have not conducted any meaningful investigations and the bylaw officer hasn't followed through with complaints made.

The landlord provided sworn affidavits from the tenant's neighbours and included videos of what counsel admits is not lurid or damning evidence against the tenant. Counsel also presented a petition signed by the tenant's neighbours seeking the tenant vacate the house.

Lastly, counsel submits that the tenant has been seen working on various cars and once had a car towed away. This is a breach of clause 36 of the tenancy agreement which prohibits the use the rental unit as a shop or business premise.

Tenant's evidence

The tenant gave the following affirmed testimony. Since moving in, he has hosted two or three daytime barbecues over the years. If somebody gets drunk, he insists that person stays the night to avoid drunk driving. Last year, there was only one party hosted by him, a Christmas party with a maximum of 30 people, not 100 as stated by one neighbour in her affidavit. He has never charged admission to a party, being a successful businessman. The invitees to his parties are likewise business professionals or personal friends, not illicit drug users. They don't fight or engage in "sex parties" as alluded to by the neighbours in their affidavits. The tenant acknowledges the neighbours called bylaw officers and the police on him but attributes it to his young age in comparison to the rest of the neighbourhood. No charges have ever been laid and no fines ever levied against him.

The tenant has had overnight guests, but those people are professional associates (senior oil and gas engineers) from out of town who come to stay with him for visits associated to their field. Last time he had guests was over a year ago and they only stayed a couple of days. Regarding the cars being worked on, the tenant acknowledges he rebuilds cars as a hobby. He barely uses the garage, only on Sundays.

In cross exam, the tenant stated he has had between 8 and 12 daytime barbecue parties since 2018. None of them were late night parties. The most people he had in his house is 30 and they were gone by 1:00 a.m. at the latest.

Analysis

The tenant acknowledges being served with the One Month Notice to End Tenancy for Cause on August 24th. In accordance with sections 88 and 90 of the *Act*, I find it was duly served on that date. He filed the amendment to his Application for Dispute Resolution, disputing the notice to end tenancy on August 30th, within the 10 days required by section 47 of the *Act*.

Pursuant to Rule 6.6 of the Residential Tenancy Branch rules of procedure, the landlord bears the onus to prove the reasons they wish to end the tenancy when a tenant applies to cancel a notice to end tenancy. The standard of proof is on a balance of probabilities, meaning the landlord must prove it is more likely than not that the facts occurred as claimed.

Turning to the reasons for ending the tenancy listed on the landlord's notice to end tenancy. Each of the seven reasons will be analyzed under a separate heading.

1. the tenant has allowed an unreasonable number of occupants in the unit/site;

I find the landlord has provided insufficient evidence to support this reason. While there are speculations suggested in the landlord's affidavit materials, there is no substantive, verifiable evidence to suggest to me there are other "occupants". Landlord's counsel acknowledged the rental unit is a "large house", meaning it could potentially accommodate many guests of the tenant. While it can be expected that the tenant may host guests from time to time, I find insufficient evidence to satisfy me there are an unreasonable number of occupants residing there.

2. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

In order for the landlord prove these reasons for ending the tenancy, I must find **other occupants or the landlord** were significantly interfered with or had their health, safety or lawful rights seriously jeopardized. Once again, I find the landlord has not provided sufficient evidence to satisfy me that this is the case. While the neighbours apparently prefer the tenant reside elsewhere, there is no remedy under the *Residential Tenancy Act* that allows me to end a tenancy due to disturbances to the neighbours. Landlord's counsel submits that the landlord herself doesn't live in the country and the only other occupants of the rental unit are the tenant's family. No testimony was provided, nor evidence produced to show either the landlord or other occupants of the rental unit suffered. These reasons for ending the tenancy I deem to be insufficiently proven.

4. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

Other than the affidavits supplied, the landlord has not provided sufficient evidence to satisfy me there is any risk to the landlord's property. While the affidavits present the tenant in a poor light, I do not find any substantive evidence of the property being at risk. Landlord's counsel did not draw my attention to any photographs of damage to the property or potential risk to the property based on the actions of the tenant or his guests. The video evidence, taken in the dark, does not provide any apparent evidence of harm to the landlord's property. As the onus to prove the reasons for ending the tenancy falls upon the landlord, I find the landlord has not satisfied me that the tenant or persons on the landlord's property have put the landlord's property at significant risk.

5. the 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;
6. the 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;

Residential Tenancy Branch Policy Guideline PG-32 [Illegal Activities] states:

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an

Act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere consumption of the drug would not meet the test of an illegal activity which would justify termination of the tenancy.

Landlord's counsel acknowledged that neither the tenant nor any of his guests have been charged with any criminal offences or even been issued violation tickets by the city bylaw officers due to illegal activity. While the affidavit materials have suggested the consumption of illicit drugs takes place at the rental unit, no verifiable proof of this was presented to me during the hearing. No photographs or video images of what was happening was presented, despite one of the affiants indicating she had a clear view of the activities. I find the landlord has not provided sufficient evidence to satisfy me the tenancy should end for the reasons of "illegal activity".

7. tenant has assigned or sublet the rental unit/site without landlord's written consent

Assignment is the Act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. The landlord did not supply any testimony or evidentiary material to indicate the tenant either assigned or sublet the tenancy. I find insufficient evidence to support this reason for ending the tenancy.

Regarding the landlord's Two-Month Notice to End Tenancy for Landlord's Use: Counsel for the landlord did not lead any evidence regarding this notice to end tenancy, indicating he was retained only with respect to the One Month Notice to End Tenancy for Cause. The only testimony I received was that the landlord's agent/son recently

graduated from college in Toronto and that he would move in “for sure” if the tenant left. As such, I find insufficient evidence to satisfy me that the landlord had an honest intent to end the tenancy for the specific reason of having the son move in. The landlord’s Two-Month Notice to End Tenancy for Landlord’s Use is cancelled and of no further force or effect.

Conclusion

The landlord’s Two-Month Notice to End Tenancy for Landlord’s Use is cancelled.

The landlord’s One Month Notice to End Tenancy for Cause is cancelled.

The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the *Act*.

As the tenant’s application was successful, the \$100.00 filing fee shall be recovered. In accordance with the offsetting provisions of section 72 of the *Act*, the tenant may reduce a single rent payment due to the landlord by \$100.00.

This decision is final and binding on the parties and 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: November 03, 2021

Residential Tenancy Branch