Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, DH, and the Tenant, KM, and Legal Advocate, LH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant confirmed that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing by Canada Post registered mail on July 24, 2021 (the "NoDRP package"). The Tenant also confirmed that she served the Landlord with the evidence package for this hearing by Canada Post registered mail on October 19, 2021 (the "evidence package"). The Tenant referred me to the Canada Post registered mail receipts with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. DH confirmed receipt of the NoDRP package and evidence package; however, could not provide the date of receipt. I find that the Landlord was

deemed served with the NoDRP package on July 29, 2021, and the evidence package on October 24, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's One Month Notice?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy began on March 16, 2020. Monthly rent is $865.00 payable on the first day of each month. A security deposit of $432.50 was collected at the start of the tenancy and is still held by the Landlord. The Tenant is the only occupant in the rental unit.

The Landlord personally served a One Month Notice on June 30, 2021 on the Tenant. The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant has allowed an unreasonable number of occupants in the rental property, and 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 effective date of the One Month Notice was July 31, 2021. DH testified that a colleague served the One Month Notice, and he witnessed the transaction. The Tenant confirmed receipt of the One Month Notice.

DH submitted that the Tenant has had periodic cohabitation or overnight guests but has not informed the Society or its manager/caretaker about these kinds of visits. DH maintains that he is relying on provisions of their tenancy agreement which states that the onus is on the Tenant to inform the Society or its manager/caretaker about guests. The particular sections of the Society's tenancy agreement provide:

> *2. No person other than to whom the accommodation is rented will be allowed to reside in or to occupy the premises.*
> *3. Overnight guests are not allowed unless previous arrangements are made with the Society or its manager/caretaker. In exceptional cases,*

> *particularly when a family visitor is planning to stay over, special permission from the Board of Directors is required in advance. No visitor(s) will be allowed to stay over in the premises in excess of two weeks. In the event of overstay such visitor(s) shall be deemed an additional occupant(s) and considered as an applicant(s) for tenancy with al [sic] due consideration by the Board of Directors and its agent(s).*

DH maintains that this housing is an independent living building, not a care building, not a shelter.

DH testified that two guests were seen locking the Tenant's door while she was not home. DH stated that the younger individual when questioned why he was there, replied with, 'It is none of your f__kin' business.' The other individual stated when asked why he had keys said, 'it was no one's business.' DH stated that there is no ban on guests, only those guests that stay overnight unless previously arranged.

On June 30, 2021, DH said there was a confidential report about a noise complaint. He stated the report contained complaints about noise, doors slamming, furniture moving, and yelling which compromised the quiet enjoyment of other tenants. DH testified that no written notice was provided to the Tenant. The noise stopped and has not been an ongoing issue.

The Tenant admitted to having one male guest who frequented her home from about June to the end of September this year. This was an old friend of hers who she reconnected with but now she no longer sees. The frequency of his visits occurred on some of her days off and the odd weekend. The whole time they were together he still maintained his own separate residence which was in another area of the city. The only other overnight guest the Tenant has had has been her daughter.

The Tenant relayed, one day, she was at work and realized she had left her wallet at home. Her male friend came by her work, borrowed her keys and went to her home to pick up her wallet. This was a one-time event, and she thought, was probably the time when her male friend was seen locking the door to her rental unit. She has never given her keys to any other person. The Tenant testified she has never made copies of the keys to her rental unit or the building.

The Tenant submitted that she has never had a party in the rental unit, she does not yell or scream, she does not slam doors. She is a senior. The Tenant does not know from

where the noise complaints arose or when they occurred. She was never given a written notice that this was an issue.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this application. It states:

> *47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> *…*
>
> *(c) there are an unreasonable number of occupants in a rental unit;*
>
> *(d) the tenant or a person permitted on the residential property by the tenant has*
>
> *(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
>
> *…*
>
> *(h) the tenant*
>
> *(i) has failed to comply with a material term, and*
>
> *(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*
>
> *…*

DH gave evidence that the Tenant has had a guest who cohabitated with her. From June to the end of September, the Tenant did admit to having a male friend stay over on some of her days off and the odd weekend; however, this male friend mostly resided in his own residence. DH testified that the residence is an independent living building and is neither a care building nor a shelter.

Section 30(1)(b) of the Act states a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by that tenant.

Further, Section 6(3)(a) of the Act states a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the Residential Tenancy Regulations (the “regulations”).

The Tenant is the only occupant in the rental unit. Between June to September, she had two guests on separate occasions visit and stay overnight, occasionally. I find that there is not an unreasonable number of occupants in the rental unit, and I dismiss this part of the Landlord’s application.

I find that the Landlord’s restrictions on guests are in contravention of Section 30(1)(b) of the Act and are unreasonable. Furthermore, I find that the term restricting visits and the requirements to make previous arrangements for overnight guests is unconscionable as it is oppressive and grossly unfair to the Tenant. I also find, if this building is an independent living building, that it is an unreasonable intrusion that the Tenant must seek permission to have an overnight guest. I find this term in the tenancy agreement is inconsistent with the Act and the regulations and is not enforceable on the Tenant.

DH testified that there was an anonymous complaint about noise, doors slamming, furniture moving, and yelling which compromised the quiet enjoyment of other tenants. The Tenant was never notified about this complaint and she maintains that she does not live a noisy lifestyle. DH testified that no written notice was provided to the Tenant and that the noise stopped and has not been an ongoing issue. I find that the Landlord has failed to prove that the Tenant significantly interfered with or unreasonably disturbed other occupants or the Landlord in the residential property. Furthermore, even if the noise had taken place, I find that the Landlord failed to communicate to the Tenant that the noise was an issue as well as failed to provide the Tenant with an opportunity to correct the noise disturbance. I find that the Landlord has not proved on a balance of probabilities that the Tenant conducts herself in a manner that raises issues of significant interference or unreasonable disturbances on other occupants or the Landlord, consequently I dismiss this part of the Landlord’s application.

As I found that there has not been an unreasonable number of occupants in the rental unit and that the Landlord failed to establish that the Tenant significantly interfered with or unreasonably disturbed other occupants or the Landlord, I dismiss the Landlord’s One Month Notice without leave to re-apply. The term about allowable guests and notice to the Society is unconscionable and not an enforceable term. The Landlord’s

One Month Notice is cancelled. The Tenant's application is granted. This tenancy shall continue until it is ended in accordance with the Act.

As the Tenant is successful in her application, I grant her recovery of the application filing fee which I order may be deducted from one rent payment owed to the Landlord pursuant to Section 72(2)(a) of the Act.

Conclusion

The Tenant's application to cancel the One Month Notice is granted.

The Tenant is granted recovery of the $100.00 application filing fee which she may deduct from one rent payment owed to the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 18, 2021

Residential Tenancy Branch