



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

The tenants confirmed receipt of the landlord's 1 Month Notice dated December 5, 2021, which was placed in their mail slot. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This fixed-term tenancy began a few years ago, with the most recently tenancy agreement signed on May 3, 2021 for a fixed term from May 15, 2021 to January 31, 2022. Monthly rent is set at \$2,500.00, payable on the first of the month. The landlord currently holds a security deposit of \$1,250.00.

The tenants disputes the reasons provided on the landlord's 1 Month Notice dated December 5, 2021, which was served for the following grounds:

- 1) The tenant is repeatedly late paying rent;
- 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 engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
- 5) The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the tenants had a history of repeated late rent payments. The landlord confirmed in the hearing that she was lenient in allowing the tenants to pay rent because of Covid-19, but that the tenants still failed to pay the rent when promised. The landlord testified that they had to chase the tenants to pay the rent, and when asked when they would pay, they would agree on a later date, which was not complied with. The landlord provided documentation to show that partial payments were made, and on various dates other than the first of the month. The landlord testified that the tenants still owe a balance, and have not made efforts to pay the outstanding rent in full.

The landlord testified that they also served the 1 Month Notice as they were informed by the strata that at least one of the tenants were engaged in alleged illegal activity that involved mail theft in the building. The landlord testified that they were not privy to the specific details of the investigation, but provided police file numbers. The landlord provided a letter written by the strata members expressing their concerns about the

various issues with the tenants. The landlord testified that an arrest was made recently, and the police had found clothing inside the rental unit that matched those worn by the parties captured on the close circuit cameras.

The landlord testified that they have also incurred fines for bylaw infractions after complaints were made due to noise complaints as well as the tenants' refusal to wear masks in public areas. The landlord testified that the tenants were provided an opportunity to attend meetings to dispute the fines, but did not attend. The landlord testified that there was a long history of bylaw infractions, but the previous letters were not submitted in evidence for this hearing.

The landlord submits that the tenants are also breaching the tenancy agreement by smoking inside the unit.

The tenants dispute all the claims made by the landlord. The tenants admit that they have been late in making rent payments, but that this was not an issue as the landlord had accepted these late rent payments in the past. The tenants testified that they had asked for permission to make these late rent payments, which the landlord had granted.

The tenants do not dispute that NR was arrested in relation to an investigation for the mail theft, but that no charges have been laid in relation to the incident. The tenants deny involvement with any illegal activity in the building.

The tenants also do not dispute that the strata had issued fines in relation to recent complaints made against them. The tenants provided an explanation for these complaints. The tenants testified that they were involved in a fight with an ex-girlfriend, which resulted in multiple noise complaints about the same incident. The tenants also confirm that a bylaw infraction was issued for their failure to wear a mask, but that was due to the fact that the police had attended, and they did not have an opportunity to put on a mask. The tenants dispute that these infractions would be sufficient to end a tenancy as they were isolate incidents, and do not establish a pattern of behaviour. The tenants testified that they had posted the referenced note in the evidence as they were upset about being wrongfully accused of mail theft.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. As the tenants filed their application within the required time limit, the onus, therefore, shifts to the landlord to justify ending the tenancy on the basis of the 1 Month Notice.

The landlord is seeking an end of this tenancy for repeated late rent payments. The tenants do not dispute that rent payments were made repeatedly late, but testified that the landlord had allowed the tenants to do so. The landlord testified that they did provide the tenants with additional time to make their rent payments, but despite the extensions given, the tenants still did not pay on time.

In consideration of the evidence and testimony before me, I find that despite the fact that rent is due on the first of the month, there is a long history of repeated late rent payments by the tenants. I find that the rent payments were accepted by the landlord, and prior to the issuance of the 1 Month Notice, the landlord had never provided the tenants with a written warning that they were now expected to make their payments on time.

I find that the legal principle of estoppel applies in this case. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct, and are now going to strictly enforce the right previously waived or not enforced.

As shown by the evidence and testimony before me, the landlord has established a pattern of accepting late rent payments from the tenants over a long period of time until the landlord had served the tenants with the 1 Month Notice. I find that no prior warning letters or Notices to End Tenancy had been served to the tenants prior to December 5 2021, or notice that the landlord was changing their conduct and was now going to strictly enforce the requirement that monthly rent payments be paid in full and on time as required by the *Act* and tenancy agreement. In the absence of written notice to the tenants informing them that late rent payments were no longer acceptable, and based on the legal doctrine of estoppel, I find that the landlord has not met the burden of proof to support that they have grounds to end the tenancy for repeated late rent payments.

The landlord submits that the tenants have engaged in illegal activity, which is disputed by the tenants.

RTB Policy Guideline #32 speaks to the meaning of "Illegal Activity", and what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered

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.

I have considered the evidentiary materials submitted by the landlord, as well as the testimony in this hearing. As stated above, the burden of proof falls on the landlord to support their claim. In this case the onus is on the landlord to demonstrate that the tenants' have indeed engaged in illegal activity. While alleged illegal activity is quite serious as it involves the interference with the legal rights of other occupants and tenants in the building, I do not find that the landlord had provided sufficient evidence to support that the tenants or their guest have engaged in illegal activity. Although it is undisputed that the police have executed a search warrant in relation to the rental unit, and one of the tenants were arrested in relation to the alleged illegal activity, as of the hearing date none of the tenants have been charged with any offences. For this reason, I am not satisfied the landlord has established that the tenants or a person permitted n the property by the tenants have engaged in illegal activity, and that the tenancy should end on these grounds.

The landlord is also seeking an end of this tenancy due to the multiple incidents that have resulted in bylaw infractions and fines. In consideration of the testimony and evidence before me, I am satisfied that the tenants have been found to be in contravention of the bylaws after complaints were made in relation to the noise originating from the tenants' rental unit, as well as their failure to wear a mask. A bylaw

infraction was also issued after the tenants had posted a note in the common area. The tenants provided an explanation for each of these incidents in the hearing. Although I find that the tenants have been found to be in contravention of the strata bylaws, I must still consider whether the tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; and whether the tenants or a person permitted on the property by the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord. In light of the explanations provided by the tenants, I do not find that the landlord has established that the tenants have been engaged in a pattern of behaviour outside of these specific incidents. Although the landlord referenced past bylaw infractions, the landlord failed to provide documentation to support this. The tenants argued that these infractions were isolated incidents, which appear to be the case. A bylaw infraction is not sufficient to justify the end of a tenancy. I must be satisfied that the behaviour is so significant or serious in nature that the tenancy must end, and in this case I do not find that this has been established by the landlord.

The landlord also submits that the tenants are smoking inside the rental unit, which is a breach of the tenancy agreement. I find that the tenants were not served the 1 Month Notice to End Tenancy for this following reason, and therefore cannot be considered in the landlord's application for an Order of Possession.

For all the reasons cited above, I am allowing the tenants' application for cancellation of the 1 Month Notice dated December 5, 2021. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice of December 5, 2021 is of no force or effect. This tenancy continues 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: January 11, 2022

Residential Tenancy Branch