



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. No issues were raised by either Party about the provision of evidence for this hearing.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on March 15, 2017. Rent of \$541.00 is payable on the first day of each month. The Landlord gave the Tenant a one month notice to end tenancy for cause dated September 26, 2021 (the “Notice”). The Notice sets out reasons and detail.

The Landlord states that between January and October 2020 inclusive the Tenant paid its rent late on 5 occasions. The Landlord confirms that the Tenant was not given any

warnings about the late payments. The Tenant states that the late payments occurred during COVID and that the Landlord agreed that the Tenant could make the late payments.

The Landlord states that the Tenant or a guest of the Tenant engaged in illegal activity by consuming illegal drugs and having a drug overdose. The Landlord has no evidence of what kind of drugs were involved and that this evidence comes from other persons and the Landlord does not know how they knew of the use of drugs or the overdose. The Landlord believes that this activity occurred off the Landlord's property. The Landlord states that the Tenant also was aggressive towards another tenant at this tenant's place of work.

The Landlord states that the Tenant caused significant interference of unreasonable disturbance on a couple of incidents that occurred in 2019. The Landlord also notes a witness letter dated October 14, 2021, of one incident of verbal aggression towards another tenant. The Landlord confirms that there is no detail of when this incident occurred. The Landlord states that the Tenant was aggressive towards the previous management on July 8, 2021, where the Tenant aggressively moved towards the agents. The Landlord has no evidence of this incident being reported to the police. The Landlord has no evidence of the Tenant causing any serious jeopardy.

The Tenant has made written submissions disputing the reasons for the Notice and denies acting in a threatening manner towards the previous agents. The Tenant submits that the guest was not using drugs and had a brain injury.

Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia,

- the tenant is repeatedly late paying rent;

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The Landlord provided no evidence to contradict the Tenant's evidence that the Landlord agreed to accept late rent payments in 2020. Further, there is no evidence that the Landlord acted to either inform the Tenant of not accepting any further late rent payment or to seek to evict the Tenant in 2020 for late rent payments. For these reasons I find on a balance of probabilities that the Landlord acquiesced to the late rent payments in 2020 has therefore not substantiated repeated late rent payments.

The Landlord's evidence of incidents occurring in 2019 is too remote in time for the Landlord to rely on these incidents as reason to end the tenancy. The Landlord's failure to act during 2019 also does not support that the incidents were serious.

There is no evidence of any illegal activity occurring on the Landlord's property and activities on public property are not under the jurisdiction of the Act. For these reasons I find that the Landlord has not substantiated that the overdose incident or the workplace incident are grounds to end the tenancy. The Landlord's evidence of verbal aggression on one occasion towards other tenants is not supported by any date of the incident and cannot be considered therefore as grounds that existed at the time the Notice was served.

The July 8, 2021, incident is a one-time incident, and the Landlord has no supporting evidence of that incident other than a letter from a witness who did not appear to give testimony at this hearing. For this reason and given the Tenant's evidence of no

aggression on that date I find on a balance of probabilities that this incident does not support a reason to end the tenancy. In effect, the Landlord has not substantiated any of the reasons for the Notice. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

As the Tenant has been successful with its claim to cancel the Notice, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 09, 2022

Residential Tenancy Branch