



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding North Park Manor Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC
 OPC, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an Order cancelling a notice to end the tenancy for cause. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by 2 agents, 1 of whom gave affirmed testimony. The tenant also attended and gave affirmed testimony and was accompanied by Legal Counsel. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated September 29, 2021 was given in accordance with the *Residential Tenancy Act*, , or should it be cancelled?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on August 1, 2017 and reverted to a month-to-month tenancy after November 30, 2017, and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's share is \$320.00 payable on the first day of each month, and there are no rental arrears. At the outset of the

tenancy the landlord collected a security deposit from the tenant in the amount of \$221.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a bachelor suite in a 17 story building, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on July 31, 2021 the tenant was served with a One Month Notice to End Tenancy for Cause and a copy has been provided by both parties for this hearing. It is dated September 29, 2021 and contains an effective date of vacancy of November 1, 2021. The landlord's agent testified that it was re-served. The reason for issuing it states:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

A copy of the House Rules has also been provided as evidence for this hearing, and the landlord's agent testified that the tenant continually makes noise after 10:00 p.m., which is contrary to the Rules, which specifies no significant noise after 10:00 p.m. or before 7:00 a.m. The tenant comes in late and makes noise by dropping keys or something. The tenant in the rental unit below has complained several times, and the landlord re-located the tenant from the rental unit below after asking the tenant to stop making noise. It's been going on for so long that it's frustrating. The tenant's life-style is something that the landlord can tolerate until it becomes a problem for someone else. The rental unit below remained vacant for a time and is now rented to a tenant who has hearing issues. Incident Reports and letters issued to the tenant have also been provided for this hearing. Since re-locating the tenant who had resided in the rental unit below, there have been no complaints about noise.

The landlord's agent also testified that the tenant also continually loses keys and building fobs, which is a security issue for the landlord, and contrary to the Rules.

The rental building is specifically for seniors but with independent living and some have mobility issues. The landlord does not require anything of this tenant that is not required of any others.

The tenant testified that the tenant has an absurd schedule, is active and goes out at night. When the tenant arrives at home, she takes her shoes off and puts the keys on the table. The tenant has no television.

The tenant also leaves windows open, and when it's windy things have fallen. However, about 3 weeks ago the tenant fell hard and no one came to the tenant's rescue or complained about the noise.

The tenant is 1 of 2 black people residing in the rental complex, and the tenant has heard a number of very negative comments, and at one point was pushed out of the elevator. The tenant stands out, but has not jeopardized anyone.

The tenant also has mobility problems and had a scooter but was told that she had to get rid of it due to a risk of fire in the hallway but other suites are designed for scooters. The tenant gave it to someone in need and uses a walker. The tenant moves around clumsy and hunched and also has carpal tunnel, so drops things.

SUBMISSIONS OF THE LANDLORD'S AGENT:

There is no prejudice to the tenant due to color or life-style. Scooters cannot remain in halls and the tenant's rental unit is a bachelor suite. The landlord does not require anything of this tenant that are not required of any others.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

The behaviour of the tenant as reported by the landlord is entirely within the range of acceptable behaviour. The *Act* requires a significant interference or an unreasonable disturbance to end the tenancy. The evidence is not enough to show significant interference or unreasonable disturbance; the landlord's evidence does not rise to that level. The tenant drops small objects, and some items blew off the window sill which is totally acceptable and not a significant interference.

Clause 10 of the tenancy agreement says that a deposit of \$15.00 is to be paid to the landlord on execution of the tenancy agreement, and clause 5 of the House Rules states that the main entrance key is to remain in possession of the tenant only and the fee is recovered when keys are returned. The remedy is a \$15.00 fee. The landlord is now charging more than that and eviction is not the appropriate response to losing keys. The tenant is under scrutiny that has nothing to do with the reasons set out in the notice to end the tenancy. The new tenant below has hearing issues and doesn't hear minor noises.

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, the reason for issuing the One Month Notice to End Tenancy for Cause (the Notice) is in dispute.

I have reviewed the Notice and I find that it is in the approved form and contains information by the *Act*. However, the landlord testified that the Notice was served on July 31, 2021 and then re-served, but it is signed by the landlord's agent dated September 29, 2021.

The landlord has provided evidence of interference or disturbances in the testimony, Incident Reports and 2 letters from the landlord to the tenant. The first Incident Report is dated July 26, 2021 and states that the tenant below this rental unit had reported an incident on June 21, 2021 and confirmed that the nightly noises occur with regularity. The second Incident Report is not dated, but speaks of lost keys and fob on June 25, March 11 and April 21, 2020. The next Incident Report is dated June 21, 2024, and I accept that is a clerical error, but there is no indication of what the actual date may have been. It states that the tenant below this rental unit reported noise like dropping marbles on the floor caused the person to wake up after 2:00 a.m. The landlord wrote letters to the tenant about noise complaints on June 14 and June 22, 2021.

The landlord testified that the rental unit below was the only occupant who complained of noise, and although no date was given, sometime after July 26, 2021 that occupant was relocated. The rental unit remained vacant for some time and a tenant with hearing issues has now occupied that unit, and there have been no further complaints.

I am not satisfied that the complaints of the tenant who previously resided in the rental unit below are significant interferences or unreasonable disturbances that justify ending the tenancy.

The landlord's agent also testified that the tenant keeps losing keys or fobs, but that cannot be considered a significant interference or an unreasonable disturbance.

In the circumstances, I find that the landlord has failed to establish when the Notice was served and any significant interference or unreasonable disturbance, and I cancel it. The landlord's application is dismissed in its entirety.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The One Month Notice to End Tenancy for Cause dated September 29, 2021 is hereby cancelled and the tenancy continues.

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: February 08, 2022

Residential Tenancy Branch