



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) to seek an order cancelling a One Month Notice to End Tenancy for Cause dated January 24, 2022 (“1 Month Notice”) pursuant to section 47 of the Act.

The Tenant and an agent (“DA”) for the Landlord attended the hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding (“NDRP”) on the Landlord’s manager on February 15, 2022. DA acknowledged the Landlord’s manager received the NDRP. I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

DA stated that the Landlord did not serve any evidence on the Tenant.

Preliminary Matter – Correction of Landlord’s Name

At the outset of the hearing, I noted the name of the Landlord stated on the 1 Month Notice was a corporate entity (“BC”) whereas the Application stated the Landlord was DA. DA testified the owner of the rental unit was BC, as stated on the 1 Month Notice, and that he was an agent for BC. DA requested that I amend the Application to remove DA’s name as the respondent and insert BC as the respondent.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”) states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

DA’s request that I amend the Application to remove his name as the respondent in the Application and insert BC as the respondent was reasonably foreseeable by the Tenant. As such, I amended the Application to remove DA as the respondent and add BC as the respondent pursuant to Rule 4.2.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the 1 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on May 1, 2019, on a month-to-month basis, with rent of \$840.00 payable on the 1st day of each month. The Tenant stated she paid a security deposit of \$420.00 to the Landlord.

DA stated the Landlord served the 1 Month Notice on the Tenant in-person on January 24, 2022. The Tenant acknowledged she received the 1 Month Notice. The 1 Month Notice stated the causes for ending the tenancy were:

1. Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
2. 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; and
3. 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 of the landlord.

The 1 Month Notice provides the following details of the events for cause to end the tenancy:

Tenant has been given numerous written and verbal warnings about the company she keeps and the homeless that she lets into the building and all of the behavioral issues that stem from this including damage from bicycles, garbage, urinating in the building, allowing outsider to use our laundry, etc etc etc. On top of this there is regular undue noise at all hours which hampers the quiet enjoyment of the other tenants.

DA stated the Tenant resides in a one-bedroom apartment. DA stated that last summer the Tenant was letting homeless people into the residential property to wash clothing and sleep. DA stated the Landlord received complaints from neighbouring tenants that there were 5 or 6 people coming and going from the rental unit and that those people were there every day along with bicycles and junk. DA stated the Landlord gave the Tenant numerous verbal warnings. DA stated the problems continued and the Landlord gave the Tenant a written warning on December 16, 2021 and the Landlord gave the Tenant another written warning letter one week later. DA did not submit copies of the warning letters served on the Tenant. DA stated that, for three or four weeks after the written warning letters were given to the Tenant, the situation was better. However, DA stated that in starting in mid-January 2022 the Landlord started receiving complaints from other tenants regarding music coming from the rental unit. DA stated there have been incidents involving calls to 911 and the Tenant's guests being administered NARCAN for drug overdoses.

DA stated that on January 24, 2022, the Landlord received a call from government services in early January advising the Tenant had redirected payment of the rent from the Landlord to the Tenant. DA stated the Tenant did not pay rent for February 2022 and the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities on February 15, 2022. DA stated the Tenant sought to obtain information about the Landlord's bank account but this information was refused. DA

stated the Tenant had informed DA that the Tenant was depositing the rent money to the Landlord's bank account but he had no idea where the Tenant was making those deposits. DA stated the Tenant now owes \$3,360.00 for rental arrears from February through May 2022 inclusive.

DA stated other tenants of the residential property complained that their personal belongings have been stolen. DA submitted that these thefts were the result of illegal activities by the Tenant or persons the Tenant has allowed on the residential property. DA stated the Tenant illegally pulled the fire alarm on one occasion for no reason. The Landlord did not submit any evidence, or call any witnesses, to corroborate his submissions that the Tenant or other persons allowed on the residential property had engaged in illegal activities

The Tenant stated she has a business account in which she deposits moneys she earns from employment. The Tenant stated she pays her bills from her business account and that, for some reason, the Landlord was not receiving payment for the rent. The Tenant stated she was willing to pay the outstanding rent over time.

The Tenant stated she only allows one person into her rental unit at a time and she denied allowing four or five people to stay with her. The Tenant stated she did not recall any incidents involving calls to 911 or the administration of NARCAN to any of her guests. The Tenant stated she has bipolar disorder and that, on one occasion she pulled the fire alarm, she was having a panic attack. The Tenant stated she takes her medication for her bipolar disorder regularly. The Tenant denied that she or any of her guests engaged in illegal activities.

DA stated there were lots of ways to prove the causes stated in the 1 Month Notice. However, DA did not submit any evidence whatsoever, or call any witnesses to corroborate his testimony. DA submitted the tenancy should be ended for the causes stated in the 1 Month Notice.

Analysis

Rule 6.6 of the RTB Rules states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. *For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.*

[emphasis in italics added]

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above the testimony of the other party to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under similar circumstances.

Sections 47(1)(e) and 47(4) of the Act state in part:

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;

[...]

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

- (ii) 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, or

[...]

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

[emphasis in italics added]

DA stated the 1 Month Notice was served on the Tenant in-person on January 24, 2022. Pursuant to section 47(4) of the Act, I find the Tenant had until February 3, 2022, to make an application for dispute resolution to dispute the 1 Month Notice. At the hearing, I mistakenly thought the Tenant made the Application on February 11, 2022. After the hearing, I determined the Application was actually filed by the Tenant with the Residential Tenancy Branch on February 1, 2022. As such, the Tenant made the Application within the 10-day dispute period permitted by section 47(4) of the Act.

DA stated the Tenant has not paid the rent for February through May 2022. The 1 Month Notice did not indicate the Landlord was seeking to end the tenancy on the basis the Tenant has been repeatedly late paying the rent. As such, this is not a ground I may consider for ending the tenancy at this hearing.

DA submitted that the Tenant has permitted too many occupants in the rental unit. However, DA did not submit any evidence or call any witnesses to corroborate his testimony. The Tenant denied this allegation. I find the Landlord has not proven, on a balance of probabilities, cause to end the tenancy on the basis there are an unreasonable number of occupants in the rental unit pursuant to section 47(1)(c) of the Act.

DA submitted the tenancy should be ended for cause on the basis that the Tenant or a person permitted on the residential property by the tenant, has engaged in illegal activity that has damaged or likely to damage the Landlord's property. DA stated the tenant or persons permitted caused noise in the rental unit that has adversely affected the quiet enjoyment of other tenants of the residential property.

Residential Tenancy Policy Guideline 32 ("PG 13") provides guidance on relevant issues such as the meaning of "illegal", which may constitute "illegal activity" and circumstances under which termination of the tenancy may be considered. PG 13 states in part:

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. would justify termination of the tenancy.

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. On the other hand, a chemical drug manufacturing operation (e.g., methamphetamine lab), would form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.

In the present case, DA stated that the Tenant's guests engaged in illegal activities that damaged or was likely to damage the Landlord's property and adversely affected the quiet enjoyment of other Tenants in the residential property. DA also stated that the Tenant's guests were stealing personal property from other tenants of the residential premises. DA stated there have been calls to 911 and some of the Tenant's guests were administered NARCAN for drug overdoses. However, DA did not submit any evidence, or call any witnesses, to corroborate his submissions that the

Tenant or other persons allowed on the residential property engaged in any illegal activities.

The Tenant stated that, if she brought anyone into the residential premises, it was only one person at a time and sometimes they brought a bicycle in the premises. The Tenant stated that none of her guests ever brought any junk with them and she has not let any of her guests abuse the residential property. The Tenant stated she did not allow any of her guests to adversely affect the quiet enjoyment, security, safety or physical well-being of another tenant. The Tenant stated she did not recall any calls to 911 or the administration of NARCAN on any of her guests. The Tenant admitted she set pulled the fire alarm on one occasion while she was having a panic attack. DA did not provide a copy of the relevant statute or bylaw to establish the setting off of the alarm by the Tenant was an “illegal activity”. Based on the conflicting testimony of the parties, I find the Landlord has not proven, on a balance of probabilities, cause to end the tenancy on the basis there has been “illegal activity” by the Tenant, or a person permitted on the residential property, as that expression is used in subsections 47(1)(e)(i) or 47(1)(e)(ii) of the Act.

Based on the foregoing, I find that the Landlord has not met the burden of proof to demonstrate there is cause for ending the tenancy pursuant to subsections 47(1)(c), 47(1)(e)(i) or 47(1)(e)(ii) of the Act. I allow the Application and cancel the 1 Month Notice. This tenancy continues until ended in accordance with the Act.

Conclusion

I allow the Application to cancel the 1 Month Notice. The 1 Month Notice is of no force or effect. The 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: May 25, 2022

Residential Tenancy Branch