



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding First United Social Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was reconvened in response to an application by the Tenant for an order cancelling a notice to end tenancy for cause pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

At the original hearing on April 4, 2022 the Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. At the original hearing the Parties confirmed receipt of each other’s evidence and that no recording devices are being used for the hearing. At the original hearing the Tenant’s advocate JC confirmed their email address for receipt of the Interim Decision and Notice of Reconvened Hearing on behalf of the Tenant. The Residential Tenancy Branch notes to file indicate that the Interim Decision and Notice of Reconvened Hearing was sent to Advocate JC at the confirmed email address on April 6, 2022. Neither the Tenant nor Advocate JC attended the reconvened hearing. At this reconvened hearing the Landlord was given further full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reasons?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence: Original Hearing

The following are agreed facts: the tenancy under written agreement started on August 1, 2021. Rent of \$760.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$380.00 as a security deposit. On December 28, 2022 the Tenant was given a one month notice to end tenancy for cause dated December 28, 2022 (the "Notice"). The reasons for the Notice are a breach of a material term and significant interference or unreasonable disturbance. The Notice provides details for the disturbances or interference and sets out an effective date of January 31, 2022. The Notice makes no reference to any material term.

The Tenant states that it does not know of any material terms and does not understand this reason for the Notice. The Landlord confirms that there is no reference to any material term in the details of the Notice.

The Landlord states that on November 12, 2022 the Tenant was using the parking stall that did not belong to the Tenant. The tenant of that parking stall was frightened by the Tenant who was agitated and who the tenant believed was under the influence of drugs. The Witness, an employee of the Landlord, states that they act as a resource worker for tenants. The Witness states that on November 12, 2022 the Tenant came to the office and was aggressively screaming that someone had vandalized the Tenant's bike. The Witness states that the Tenant came very close to the Witness while yelling. The Witness states that when another employee came the Tenant also accused this person of touching the bike. The Witness states that the Tenant left when asked saying "don't touch my bike".

The Tenant states that on this date the Tenant had a panic attack and that the Tenant apologized before leaving the office. The Tenant states that nobody was threatened

and that the Witness and other staff person never looked frightened or disturbed. The Tenant argues that the incident was not serious.

The Landlord states that other incidents have not been documented and that after November 12, 2022 the Tenant was abusive toward staff and accused the staff of damaging the Tenant's bike. The Landlord states that they do not provide supportive housing and that the Landlord has zero tolerance for the Tenants very abusive language. The Landlord states that the Tenant has shouted and sworn at the staff for the 8 months preceding the Notice and that this has upset at least one staff person. The Landlord states that they have numerous complaints from other tenants. The Landlord states that on November 14, 2021 the Tenant swore at a staff person and accused this person of doing things to the Tenant's bike. The Landlord states that the Tenant continued to yell outside the unit after the staff person left. The Landlord states that on December 10 and 21, 2021 the Tenant caused loud music to occur at midnight and 6:00 a.m. The tenant complained that the loud noise caused their rest to be disrupted and has affected their ability to work.

The Landlord states that on October 28, 2021 at 11:00 p.m. the Tenant was heard yelling and that a staff member spoke with the Tenant for approximately 20 minutes before the Tenant was calmed down. The Landlord states that on September 10, 2021 the Tenant created a risk to the property by sleeping in a hallway and trying to open another tenant's unit on a different floor. The Landlord states that they have no evidence of disturbance of another occupant. Similarly, there were no written complaints about the Tenant yelling in the elevator. The Landlord states that when the Tenant went back to its unit the smoke detector was going off and the unit was smoke filled by items on the stove on high power. The Landlord states that the security guard removed the items from the stove and that the matter was resolved. The Landlord has

no evidence of the fire department being called and states that there was no permanent damage to the unit or building.

The Tenant states that they have not disturbed anybody, that the incidents are not understood and that the Tenant is a reasonable person. The Tenant states that the Landlord has communication issues and that the Tenant never knows what's going on. The Tenant states that prior to the Notice there was no communication with the Tenant and that without some communication serving the Notice is unfair. The Tenant states that all the complaints now being made by the Landlord are new to the Tenant and that the Landlord is going very far without ever speaking to the Tenant. The Tenant states that on November 30, 2021 the Tenant had a meeting with the Landlord where the Landlord had invited three other persons to the meeting. The Tenant states that they did interrupt the Landlord on this occasion as the Tenant felt "picked on". The Tenant states that they also hear the noise of thumping with a techno rhythm and that it is not the Tenant playing techno drums. The Tenant states that at the meeting on November 30, 2021 the Landlord had agreed that the noise was not being made by the Tenant.

Background and Evidence: Reconvened Hearing

The Landlord refers to the Tenant's evidence submission of a medical letter dated March 21, 2022, and argues that the letter, signed by medical specialist, is biased as it does not take into the account the Landlord's position.

The Landlord states that the Tenant's behavior has not changed since the provision of the Notice, that there is continuing late night disturbances with screaming and carrying on for unknown reasons. The Landlord states that they have information from a 3rd party to suggest that the Tenant is using drugs and leaving needles around. The Landlord confirms that there is no evidence that the Tenant was witnessed using drugs

or leaving needles. The Landlord confirms that there is no evidence that anyone was disturbed but that the Landlord is concerned with children being resident in the building.

The Landlord states that although Witness ND had made a written complaint about noise, the Landlord cannot locate this complaint. A complaint was made in relation to an early morning noise incident on December 21, 2021.

Witness ND states that the noise is currently not as bad as before as there is no longer any bass sounds and as the kitchen cupboard doors have been removed, there are no longer any slamming noises. The Witness states that they made 3 noise complaints and that as the Witness is partially deaf, they can only hear loud noises. The Witness stated that the noises occurred between 10:00 p.m. and 6:00 a.m. The Witness states that the noise had a sudden jarring effect that scared the Witness and adversely affected the Witnesses' chronic depression and anxiety disorder. The Witness confirms that no medical help was sought. The Witness states that recently in July 2022 at 9:00 a.m. the Tenant was shaking the door of the Witnesses unit. The Witness states that the door was opened and the Tenant informed the Witness that they were trying to text the Witness. The Witness states that the Tenant does not have a phone number for the Witness. The Witness states that this incident made the Witness "a little paranoid" so the Witness has been keeping an eye on the Tenant. The Witness states that in June 2022 needles were found in front of the Tenant's door. The Witness states that they did not report this but collected the needles and threw them away. The Witness states that while they are not concerned about this they are concerned for children in the building. The Witness states that prior to serving the Notice the Tenant used to scream all the time and that the first time the Witness heard the screaming they thought that a child

was being assaulted. The Witness confirms that they discovered that the screams came from the Tenant.

The Landlord seeks an order of possession for September 30, 2022, should the Notice be found valid.

Analysis

Section 47(1)(h) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Given the Tenant's evidence of not understanding the "material breach" as a reason in the Notice, the Landlord's evidence that the Notice does not make any referral to any terms being breached, and no evidence of a letter to the Tenant setting out the material term being breached with time for correction, I find that the Notice is not valid for this reason.

Section 47(1)(d)(i) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if 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. Ending a tenancy is a serious matter and there must be correspondingly sufficient evidence to support the reason or reasons for ending a tenancy. While the Landlord gives evidence of numerous complaints prior to November 2022 there is no supporting evidence of such complaints. There is no supporting evidence that the use of abusive language by the Tenant caused any significant interference or unreasonable disturbance to anyone other than disturbing the Landlord's "zero tolerance" for abusive language. There is only unsupported evidence of a couple of incidents, prior to the Notice that the Tenant was heard yelling or screaming from their unit. There is no supporting evidence of the Tenant playing loud music and the Tenant's undisputed evidence is that the Landlord agreed in November 2021 that the Tenant did not make this noise. Of the loud noises complained

of on December 10 and 21 there is only evidence describing loud jarring noises that does not support noise from music. While a few instances of noise may be a disturbance or interference I do not consider a few instances to bring it to the level of significant or unreasonable. Finally, despite the Landlord's evidence that the Tenant's behavior remained unchanged with continuing late-night disturbances, this evidence is inconsistent with the Landlord's Witness evidence that the situation is "not as bad" as before and was not overly concerned with the Tenant's recent behavior. For these reasons and given the Tenant's evidence that they did not disturb anyone, I find on a balance of probabilities that the Landlord has not provided sufficient evidence to support that the Tenant significantly interfered with or unreasonably disturbed anyone. The Tenant is entitled to a cancellation of the Notice and the tenancy continues.

Conclusion

The Notice is 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 Act.

Dated: August 11, 2022

Residential Tenancy Branch