



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LINDSAY MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, 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 August 30, 2022 was given in accordance with the *Residential Tenancy Act*, particularly with respect to the reasons for issuing it?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed-term tenancy began on March 1, 2016 and expired on May 31, 2016 and the parties agreed that the tenancy will continue on a month-to-month basis, and the tenant still resides in the rental unit. Rent in the amount of

\$575.00 was originally payable under the tenancy agreement, which has been increased over time and is now \$601.00 effective January 1, 2023. Rent is due on the 1st day of each month and there are no rental arrears. On February 16, 2016 the landlord collected a security deposit from the tenant in the amount of \$287.50 as well as a pet damage deposit of \$287.50 which was paid in installments. Both deposits are still held in trust by the landlord. The rental unit is an apartment containing 56 units on 5 levels, and the landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on August 30, 2022 the landlord's agent delivered a One Month Notice to End Tenancy for Cause to the tenant personally. A copy has been provided by the landlord for this hearing and it is dated August 30, 2022 and contains an effective date of vacancy of September 30, 2022. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- 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;
- 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 or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord agreed that another person could occupy the rental unit with the tenant, but the tenant had a few other people also occupy it as well as random people staying overnight for a couple of hours. People have been going back and forth in hallways and disturbing other tenants. On one occasion, a guest came to get in the front door, and the landlord's agent asked him to provide a key card, but he denied he had it; it was in his hand. When he left he contacted the tenant, who contacted the landlord's agent advising that the person had the key card because he went to pick up a prescription for

the tenant. Videos have been provided for this hearing. The landlord also referred to paragraph 20 of the tenancy agreement which states: "21. OCCUPANTS AND INVITED GUESTS – Landlord will not interfere with Tenant having guests unless the number of guests is unreasonable or their conduct disturbs, or annoys the other occupants of the residential property, or their conduct is damaging to said residential property or they act in a belligerent or surly manner towards Landlord or the resident manager, or other tenants. For security reasons, should a guest be unwilling to identify whom he/she is visiting, such person(s) shall be deemed to be a trespasser and Landlord may demand that he/she leave the premises."

With respect to a significant risk, the landlord's agent referred to a video of a guest opening the lobby door and another person pulling on the door, and 2 people running in after the guest.

With respect to illegal activity, the landlord's agent testified that a guest of the tenant illegally entered the laundry room, changed his clothes and covered the camera. Police were called but the landlord's agent does not know why.

Also, scooters are not allowed, and the footage shows a guest bringing in a scooter. The day that the landlord's agent left for a 2 week vacation an employee taking their place told the landlord's agent that a scooter was in the building, and the next day the employee advised that a person broke the glass on the front lobby door. Footage has been provided. A video shows duct tape on the door, which stayed there until August 22, 2022. The door was broken on August 15. On August 19 the landlord's agent put a note under the tenant's door saying to remove the scooters by 5:00 p.m. or they would be removed.

The tenant testified that she has not done anything wrong. The tenant helped a friend out and another person was there as a care giver because the person got blood poisoning and an ambulance was there. There were no hospital beds available, but he went to the hospital for 2 weeks and now he resides elsewhere and the infection is cleared up. He wasn't of sound mind due to the blood poisoning.

Police noticed a guest of the tenant on the balcony, and arrested the person for outstanding warrants.

The tenant further testified that the landlord's videos are confusing, going back and forth. The tenant does not know the person in the video in the laundry room; the tenant cannot see his face.

The scooters were removed improperly and damaged. The tenant didn't let the guest in when that happened, and someone else held the door open; the guest knows a lot of people in the building, and the tenant doesn't know who was in the laundry room.

There are not a lot of people attending at the rental unit. The tenant also has medical issues; cancer and stomach problems, and didn't know that she had to notify the landlord every time the key card was given to another person; the tenant is not well enough to go get the medications.

The tenant does not believe she should have to pay for the window. The tenant doesn't have a buzzer, it was taken out because the tenant was blamed for letting people in. The tenant has paid about \$204.00 so far. The tenant didn't know the person accused of breaking the window was in the building, and had no idea. It was not the tenant that let the person into the building, but the tenant took responsibility for it by putting cardboard and duct tape on it after she found out about it to prevent kids from getting cut, and talked to the assistant manager.

The tenant's witness testified that the witness has been a friend of the tenant for over 40 years. The witness' home got dry-rot and had to move out, so now lives with the tenant.

The witness also testified that the tenant does not have an over abundance of people in the apartment.

SUBMISSIONS OF THE LANDLORD:

The tenant said that she would take responsibility for the window to the landlord's agent and husband because it was her guest that caused it. Some payments have been made, and \$472.10 is still outstanding.

SUBMISSIONS OF THE TENANT:

The tenant's application for an order that the landlord comply with the Act or the tenancy agreement refers to a camera above the tenant's door that the tenant has requested the landlord take it down, but has not done so. The tenant wants a second key card returned because presently the tenant and roommate cannot both go out at once.

The tenant has not done anything wrong. The tenant was told by other residents that the door was broken, so the tenant put the duct tape on it.

Analysis

Firstly, 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. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have also reviewed all of the evidence, including videos, character letters of the tenant, the landlord's letter to the Residential Tenancy Branch, and the tenant's written request for the landlord to remove the video camera.

I find that there is absolutely no evidence of illegal activity. Illegal activity relates to activity that is against a Provincial or Federal statute. It is not illegal for a person to be in the laundry room, or for the tenant to have a guest who has an outstanding warrant, unless the tenant is hiding the person, and there is no evidence of that.

One video of the landlord shows a person opening the front door of the building from inside and another person immediately entering and chasing the person. The tenant testified that she doesn't know the person in the video recorded in the laundry room, and the landlord's agent did not dispute that.

I see no evidence of seriously jeopardizing the health or safety or lawful right of another occupant or the landlord, and no evidence of a significant interference or unreasonable disturbance.

The tenant testified that she does not know who broke the door, and the landlord has not provided any evidence that it was broken by a guest of the tenant who was permitted on the property by the tenant.

The videos show a number of people entering and exiting the rental unit, but I do not see any evidence of an unreasonable number of occupants.

I find that the landlord has failed to establish any of the reasons for issuing the Notice, and I cancel it.

I also find that the landlord has failed to establish that the tenant, or a person permitted on the property by the tenant caused the damage to the door.

With respect to the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement, I find it intrusive to have a camera outside the tenant's apartment. The tenant's letter to the landlord indicates that no other place, other than the lobby and laundry room is there a camera, and the landlord did not dispute that. A landlord is required to provide a tenant with quiet enjoyment, free from unreasonable disturbance, and I find the intrusive camera to be unreasonable. I order the landlord to remove the camera or point it in another direction immediately.

The tenant also submitted that the landlord took a key card and refused to return it. The landlord's agent testified that the tenant was permitted a roommate, and I order the landlord to return the key card to the tenant immediately.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated August 30, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby order the landlord to remove the video camera from the tenant's door, or point it in a different direction so as to allow quiet enjoyment to the tenant.

I further order the landlord to return the key card to the tenant immediately.

This order is final and binding and may be enforced.

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 01, 2023

Residential Tenancy Branch