



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding FORTH GEN HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenants' application. All parties confirmed receipt of each other's evidentiary materials.

The tenants confirmed receipt of the 1 Month Notice to End Tenancy dated January 12, 2023. Accordingly, I find that the 1 Month Notice was duly served on the tenants in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recovery of the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on June 1, 2004, with monthly rent currently set at \$2,200.00 payable on the first of each month. The landlord holds a security deposit in the amount of \$737.00 for this tenancy.

The landlord served the tenants with a 1 Month Notice on January 12, 2023 providing the following grounds:

1. The tenants have allowed an unreasonable number of occupants in a rental unit;
2. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords;
3. The tenants or a person permitted on the property by the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlords;
4. The tenants or a person permitted on the property by the tenants has put the landlord's property at significant risk; and
5. The tenants 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.

The landlord served the tenants with the 1 Month Notice after several incidents that took place between January 1 and January 4, 2023 involving one of the tenants, MM, which necessitated the attendance of the police at the building. The incident began around 8:30 p.m. on January 1, 2023 when the police entered the building after it was reported that MM was intoxicated and waving a machete around. The police were in attendance for several days, which caused a significant disturbance to other tenants. The landlord submitted a copy of the incident report from the resident manager, as well as letters of complaint from these tenants who expressed concern and fear during and following this incident.

The landlord's agent testified that this was not the first incident or complaint about the tenants in this rental unit, and submitted in evidence the following warning letters and letters of complaint issued in previous years:

- 1) November 5, 2008: Letter from landlord to tenant about complaints of intoxicated behaviour, loud noise, and excessively loud stereo music and partying from the unit, and carrying out into the common hallways of the building. Congregating of the tenants' children and other teens in the lobby and creating unacceptable noise.
- 2) June 17 2009: A written complaint about the tenants about the front main door being blocked by newspapers and teenagers standing at the front of the building at 10:00 p.m. on June 16, 2009. The teenagers informed the letter writer that they were going to a unit on the second floor, but the letter writer noticed that the same group of teenagers entered the tenants' suite which was located on the same floor as the letter writer's suite. The letter writer stated that a steady parade of teenagers came and went from the suite from 10:00 p.m. to well past midnight, and were loud and disruptive, causing a disturbance in the hallways and stairways.
- 3) July 17, 2010: Letter from landlord about a propane barbecue and propane heater on the deck, in contravention of the tenancy agreement.
- 4) February 8, 2012: Letter from landlord about excessive noise , loud stereo and parties, yelling, fighting, banging, and other disturbances, including a verbal altercation between a guest of the tenants' and another tenant in the building.

In addition to the disturbance caused by the tenants and their guests, the landlord alleges that the tenants have allowed an unreasonable number of occupants in the rental unit. The landlord testified that on January 12, 2023, they had discovered that there were five occupants in the rental unit, when there were only three approved as per the tenancy agreement.

JLM provided a written statement on behalf of the tenants for this hearing. JLM stated that the police were in attendance on January 1, 2023 to perform a wellness check for MM, and that no arrests were made. MM was brought to the hospital, and admitted under the Mental Health Act. JLM wrote that MM suffers from PTSD, and that JLM and DM were in attendance to assist police officers, and ensure the well being of RM. The police returned on subsequent days to follow-up with the family of MM, and to deal with an alleged assault on RM.

On January 5, 2023, MM was formally charged with assaulting RM. MM was released on conditions, including a condition preventing MM from returning to the rental unit.

The tenants deny that there have been more than three occupants in the rental unit. The tenants do not dispute that the third occupant was not approved by the landlord, and has since removed that third occupant upon being made aware of the fact. As of January, the only occupants in the rental unit are DM and RM.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

The first reason for ending the tenancy provided on the 1 Month Notice is that “the tenants have allowed an unreasonable number of occupants in a rental unit.”. Although the landlord alleges that there were five occupants in the rental unit, the tenants deny that there were more than three. Whether the three occupants were approved or not, the grounds for ending the tenancy pursuant to the 1 Month Notice requires that the landlord demonstrate that the number of occupants were unreasonable. In light of the disputed testimony before me, I find that the landlord has not provided sufficient evidence to support that there were more than three occupants in the rental unit. In this case, I find that the number of occupants in the rental unit have not changed from the original number of occupants when the tenancy began. The tenancy agreement allowed for three tenants in the rental unit. Furthermore, the tenants testified in the hearing that after being informed by the landlord that the additional occupant was not approved, the tenants had complied by removing that additional occupant.

I find that the landlord has not provided sufficient evidence to support how that the number of occupants could be considered unreasonable, especially when the total number of occupants is the same as, or less than, the number of occupants at the beginning of the tenancy. For this reason, I am not satisfied that the landlord has grounds to end the tenancy for this reason.

The landlord also alleges that the tenants have engaged in illegal activity,

RTB Policy Guideline #32 speaks to the meaning of "Illegal Activity", and what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

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.

I have considered the evidentiary materials submitted by the landlord, as well as the testimony in this hearing. As stated above, the burden of proof falls on the landlord to support their claim. In this case the onus is on the landlord to demonstrate that the tenants' behaviour would be considered illegal, and whether this illegal activity is serious enough to warrant the termination of this tenancy.

In this case, although it is undisputed that one of the named tenants was arrested and charged, no proof of conviction has been submitted in evidence. Even in the case that one of the tenants did engage in behaviour that could be considered illegal, I must be satisfied that the tenants' behaviour warrants the termination of this tenancy. In this case, the illegal activity is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant. In this case, I am not satisfied that any of the tenants have engaged in illegal activity, and in the case of the alleged assault by MM, the victim of the alleged assault is another tenant in the same suite. As the victim of the alleged assault is a family member in the same suite, and as MM is currently bound by conditions not to attend at the rental unit, I am not satisfied that MM poses a significant threat to the well being, security, or safety of any occupant in the building. Accordingly, I am not satisfied that the landlord has met the burden of proof to end this tenancy on the basis of illegal activity.

I will now consider the remaining three grounds. I note that the landlord had submitted letters referencing complaints that date back to 2008. In review of these letters, I find that the complaints and violations referenced are not significantly related to the recent incident in January 2023 involving MM. I find that the July 17, 2010 is not only unrelated as the complaint relates to a propane barbecue and heater, this incident took place over 13 years ago. Prior to this January 2023 incident, the last complaint referenced in the landlord's evidence relates to a complaint about disturbance and noise that dates back to February 8, 2012: I note that despite these complaints, the landlord had allowed the tenancy to continue. As these complaints do not specifically reference MM, and as the landlord had allowed the tenancy to continue for over 10 years following these incidents, I consider these matters resolved and unrelated to the current incidents that took place in January of 2023.

I have considered the submissions of both parties in relation to the incidents that took place in January 2023. Although it is undisputed that MM was engaged in behaviour that required the attendance of police, and which did cause a significant disturbance to others who live in the building, I am not satisfied that these incidents justify the ending of this tenancy on the grounds provided on the 1 Month Notice.

Although I do not doubt that the incidents did cause considerable concern and fear from the other tenants in the building, especially since the incident was disruptive in nature and involved the attendance of police over several days, I am not satisfied that the tenants have put the landlord's property at significant risk, nor am I satisfied that the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Although the other tenants felt threatened, stressed, and scared, these reactions are not indicative of, or a reflection of, whether MM or the tenants were truly a threat to others as these tenants were not privy to the information about why the police were there.

Lastly, although I am satisfied that MM did cause a significant disturbance in January 2023, I find this incident to be an isolated one where there is no ongoing threat to other tenants or the landlord. I find that the tenants provided a detailed and upfront explanation about what happened, and there has not been any similar incidents since early January 2023. Although the incident that took place in the first week of January 2023 were troubling, especially to others in the vicinity who did not know what was going on, I do not find that this incident justifies the end of this tenancy,

For the reasons cited above, I find that the landlord has failed to demonstrate to the extent required that this tenancy should end for the reasons provided on the 1 Month Notice, and accordingly I am allowing the tenants' application for cancellation of the 1 Month Notice. The 1 Month Notice dated January 12, 2023 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

I allow the tenants' application to recover the filing fee for this application.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice dated January 12, 2023., This tenancy is to continue until ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: June 13, 2023

Residential Tenancy Branch