



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC

Introduction

This matter dealt with an application by the tenant to cancel a One Month Notice to End Tenancy for cause and to request more time to make an application to cancel the Notice.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were personally served to the landlords' office on, April 09, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. The landlord called witnesses and the tenant was supported by her social worker and family preservation counselor.

On the basis of the evidence presented at the hearing, a decision has been reached.

Issues(s) to be Decided

- Is the tenant entitled to more time to make an application to cancel the Notice to End Tenancy?
- Should the Notice to End Tenancy for Cause be cancelled?

Background and Evidence

This tenancy started on December 01, 2008. Rent was \$630.00 per month payable on the 1st of each month. This is a month to month tenancy. The tenant paid a security deposit of \$433.33 on November 21, 2008.

On January 16, 2009 the tenant was served a Notice to End Tenancy for Cause due to excessive noise disturbing other tenants, seriously jeopardizing the health and safety or lawful right of another occupant or the landlord, putting the landlords property at significant risk, adversely affecting the quiet enjoyment, security, safety and physical well-being of other occupants or the landlord and a breach of a material term of the tenancy that was not corrected within a reasonable time after written notice to do so. The landlord testifies that after a meeting took place between the landlord, the tenant and the tenants support workers this Notice was set aside and an Agreement for Continued Tenancy was drawn up and signed by both parties. This agreement outlined the terms and conditions the tenant must meet for the tenancy to continue. If the tenant breached these terms then the tenancy would be terminated.

The landlord testifies that since signing this agreement the tenant and her guests have continued to cause a disturbance to other tenants with excessive noise, guests climbing on another tenants' balcony to gain access to the tenants unit, late night parties, excessive drinking, fighting and having the police attend on different occasions. The landlord is concerned about the effect on their other tenant's right to quiet enjoyment of their rental units and testifies that a long term tenant who lived beneath the tenant has moved out of their unit due to the excessive noise and the tenants guests climbing on her balcony. The landlords are also concerned about an unauthorised person living in the rental unit. The landlords feel they have done everything they can to support the

tenant but must weigh up the needs and rights of the other tenants living in the rental units.

The maintenance coordinator gave his evidence concerning the tenants' guests climbing on the balcony damaging the balcony railings and damage to the interior of the unit with holes in the doors and a broken window. The witness testifies that the management of the building have had to increase the security presence for the building due to the other tenants feeling threatened by the tenants guests.

The weekend relief caretaker gave evidence concerning the high levels of noise but testifies that although this has continued it has been noticeable better in the last few weeks. However, she testifies that other tenants have approached her concerned about the affect the noise and police presence has on their children. The new tenant living under the tenant is also worried about people jumping onto her balcony.

The tenant testifies that she is working closely with her support team to try to prevent these episodes happening again. The tenant testifies that she has distanced herself from the friends that used her rental unit to hold parties in. The tenant apologies for all the trouble and is taking part in a drugs and alcohol rehabilitation program alongside grief counselling. She is due to start a parenting program shortly. The tenant received the One Month Notice to End Tenancy for Cause on March 30, 2009. She applied for Dispute Resolution on April 08, 2009.

The tenants' social worker and family preservation councillor both testify to the tenants desire to get back on track and establish herself in the community. They also acknowledge the way the landlords have supported the tenant.

Analysis

I find that the documents were served within the correct time frame and the tenant applied for Dispute Resolution within 10 days of service of the One Notice to End Tenancy. Therefore, she does not need to apply for more time to make an application for Dispute Resolution.

I find there is sufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause. With respect to the first grounds on the Notice; I find that the tenant has significantly interfered with or unreasonable disturbed other tenants due to the excessive noise and the behaviour of her guests at her rental unit. s. 47(1)(d)

With respect to the second grounds of the Notice; I find that the tenant by allowing guests to enter her rental unit by the balcony of another tenant it has jeopardized the lawful right and safety of the other tenant. s. 47(1)(d)

With regard to the third grounds on the Notice; I find that the tenant has caused or allowed her guests to cause damage to the rental unit with holes in the doors, a broken window and by pulling the railings of the balcony from their mountings making them unsafe. s. 47(1)(d)

With regard to the forth grounds on the Notice; A tenant is required to repair damage to the rental unit that is caused by the actions or neglect of the tenant or persons permitted on the residential property by the tenant. The damage to the rental unit has not been repaired by the tenant. s. 32(3)

With regard to the fifth grounds on the Notice; I find that the tenant has breached the tenancy agreement that was drawn up between the landlord and tenant on February 04,

2009. The tenant agreed to be bound by this Agreement for Continued Tenancy by not having in residence any other occupant other than those listed on the tenancy agreement. The tenant agreed to allow other occupants of the building quiet enjoyment of their suites by ceasing all incidents of excessive noise. The tenant agreed that the tenancy would be placed on a six month probation period to ensure conditions are met and that she will vacate the rental unit if she is in breach of these conditions. The tenants also agreed that no further considerations will be given by the landlord. S. 14(2)

The landlords have requested an Order of Possession effective on or before May 30, 2009.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective On May 30, 2009. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety, without leave to reapply.

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 12, 2009.

Dispute Resolution Officer