



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a cancellation of a One Month Notice to End Tenancy for Cause. The Tenant also requests an order that the Landlord repair the broken intercom system to his apartment.

The Tenant and an agent for the Landlord appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the Residential Tenancy Act (“Act”)?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the Tenant entitled to an order requiring the Landlord to make repairs, pursuant to section 32 of the Act?

Background and Evidence

The Tenant states that he has been living at the rental unit for about 2 ½ years and that it is in an area with over 100 homeless people, who often wander onto the property and attempt to gain access to the building. He lives on the third floor, but has witnessed homeless people laying in the hallway, usually on the main floor. The Landlord states that security has been an issue in the past, and that a new metal security door was installed and that new locks were also installed to help with the issue.

The Landlord claims that there have been many complaints about the Tenant having invited guests shouting up to his window to gain access and that these guests have caused disturbances. One incident in November resulted in a woman being escorted from his apartment by police in handcuffs. There were two handwritten notes stating that guests of the Tenant were causing disturbances in November 2017, but these letters appear to be unsigned and the identity of the complainants is unknown; when asked, the Landlord admitted that no witnesses were brought forward to testify as to the disturbances.

The Landlord provided warning letters to the Tenant and finally served a One Month Notice to End Tenancy for Cause at the start of 2018; in a memo to the Tenant dated February 2018, the Landlord withdrew that Notice. The Landlord states that the former caretaker again lodged a complaint on March 7 and May 6 regarding homeless people trying to gain access apparently to see a person with the same first name of the Tenant to purchase heroin. The Landlord states that the new caretaker, who has been working about two weeks, reported that a man was looking for someone with the same first name as the Tenant, and he was refused access to the building; however this new caretaker did not provide a written statement about the incident.

The Landlord served a One Month Notice to End Tenancy for cause on May 9, 2018 by posting in on the Tenant's door. The reason stated was that the Tenant or his invited guests were causing a disturbance to others and that the Tenant was in material breach of his tenancy agreement. The Tenant filed an application on May 17, 2018 to dispute the Notice.

The Tenant denies that he or his invited guests have caused any disturbances. The Tenant states that he recently had back surgery and has been struggling with back

issues for years, with limited mobility at times. He states that he was in hospital up to March 6 for surgery and that he knows nothing of any person trying to find him for drugs during that time period, when the former caretaker provided a statement about an incident. He states that there is no direct evidence that any of these homeless people are his invited guests and that he does not do drugs, drink or party.

As for the November incident, he states that there was no complaint of any disturbance but that police showed up and asked if a certain woman was in his suite, he replied yes, and they took her away, apparently due to an outstanding warrant. He is frustrated with the accusations and states that the homeless situation bothers all the occupants, but that he is not inviting or allowing these people into the building and only has about four guests he lets into the apartment. He states that none of these complaints seem to occur when he is present in the apartment, but rather, seem to conveniently arise when he is not at home.

The Tenant went on to state that his only complaint against the Landlord is his intercom which is needed for his guests to contact him for access. Sometimes they phone him and he goes downstairs to let them in. He complained about the needed repair and states two electricians inspected it and did nothing. The Landlord states that she was unaware of the problem with the intercom until the hearing.

Analysis

A Notice to End Tenancy must comply with section 52 of the Act in form and in content. I have reviewed the notice and find that it complies with the requirements and that it was properly served on the Tenant. The Tenant had 10 days to file an application to dispute the notice, and I find that he filed 8 days later, within the required time limit.

Under section 47 of the Act, a landlord may serve a one month notice to end a tenancy if a tenant or a permission permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or seriously jeopardized the health or safety or lawful right of another occupant; the notice may also be given if the tenant is in breach of a material term of the tenancy agreement that was not rectified within a reasonable period of time.

The Landlord bears the burden of proving that the notice is valid. The Landlord submitted two handwritten papers which are not dated or signed; the witness is not identified, nor was present at the hearing. The one letter is unclear as to who the complaint is even lodged against; the second letter states that the Tenant let in a street

person on one night. I find that this evidence is not sufficient to warrant an eviction of this Tenant.

With respect to the incident where a woman was arrested from the Tenant's apartment, there is no evidence that there was any disturbance to the occupants of the building; the Tenant states it was related to a warrant which he knew nothing about. I find that this incident also does not warrant an eviction.

More recently, two statements were filed by the former caretaker. In her March letter, she states that two women claimed to be on site to see the Tenant and these women became abusive towards her spouse and police were called in to remove them. In the May memo, the caretaker states that she is getting complaints that homeless people are showing up and claiming they are there to visit the Tenant. There was no statement from any witness of these allegations presented at the hearing, nor were any witnesses made available for questioning by the Tenant to confirm the exact nature of the disturbances, when they occurred, who witnessed the events and whether this Tenant was present or even involved.

I find that the Landlord has failed to satisfy me that the Tenant or his invited guests have caused disturbances to other occupants or the Landlord. It is clear from both parties that there is an issue with homeless people attempting to gain access to the building, and that there are people in the area using illegal drugs, but the evidence presented does not convince me that this particular Tenant is responsible for those complaints or is in any way directly connected with the people complained of. Accordingly, I must cancel the Notice to End Tenancy with Cause dated May 9, 2018. The tenancy shall continue until terminated by either party with proper notice.

I find that the Tenant has provided sufficient evidence that his intercom system is in need of repair. The intercom is necessary for the Tenant to screen visitors and allow access only to authorized guests; given the issue with homelessness in the area, it is in everyone's best interest that this security measure be attended to. The Landlord shall attend to that repair pursuant to section 32 of the Act, within 30 days of the date of this decision.

Conclusion:

The One Month Notice to End Tenancy for Cause is of no force or effect. The Tenancy shall continue until terminated by either party with proper notice.

The Landlord is required to repair the Tenant's intercom system within 30 days of the date of this decision, so as to ensure that the Tenant can screen visitors and provide access to authorized guests.

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: July 09, 2018

Residential Tenancy Branch