



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel a One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Amend application to change identity of landlord

At the outset of the hearing, landlord GS advised me that he was the property manager for the residential property, and not the landlord. He stated that the landlord with whom the tenant entered into the tenancy agreement was a corporate entity (full name on the cover of this decision, hereafter referred to as the "landlord" or the "corporate landlord"). The tenant acknowledged that this was true.

As such, and with the consent of the parties, I order that the application be amended to remove GS as a respondent landlord to this application and replace him with the corporate landlord.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 1, 2020. Monthly rent is \$1,250 and is payable on the first of each month. The rental unit is an apartment on the third floor of a multi-unit building. The tenant paid the landlord a security deposit of \$625, which the landlord continues to hold in trust for the tenant.

GS testified that the tenant and individuals she has permitted into the residential property have caused significant disturbances to the other occupants for much of her tenancy. On December 21, 2020, the landlord issued a one month notice to end tenancy for cause. However, shortly thereafter, the tenant's boyfriend passed away, and GS decided not to enforce that notice, as he thought that the disturbances might cease with the tenant's boyfriend's passing. Unbeknownst to GS, the tenant applied to dispute the December notice to end tenancy for cause, and had it cancelled following a March 25, 2021 hearing at the Residential Tenancy Branch (the "**RTB**"). The file number for this proceeding is on the cover of this decision. GS testified that he was unaware of this hearing, or the decision to cancel the December notice to end tenancy for cause.

In any event, GS testified that the disturbances did not cease after the tenant's boyfriend's passing. He testified that he received numerous complaints via telephone from neighbours of the tenants relating to loud parties and people smoking inside the rental unit. On May 4, 2021, the landlord served the tenant with a second one month notice to end tenancy for cause (the "**Notice**"), with an effective date of June 4, 2021. It set out the basis for ending the tenancy as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Put the landlord's property at significant risk

The notice provided further details of the reason it was issued:

[The tenant] was given multiple verbal and written warning letters due to the excessive noise and smoking in her apartment. Her continued actions to host multiple persons in her unit causing disturbances to her neighbors' quiet enjoyment has resulted in multiple complaint letters from all surrounding neighboring units. These incidents have been documented started from September 2020. At this time the owner/landlord are asking [the tenant] to vacate her unit.

The tenant disputed the Notice on May 13, 2021.

The landlord submitted four warning letters sent to the tenant relating to cigarette smoke emanating from the rental unit (September 4, 2020), loud noises and yelling coming from the rental unit (November 2, 2020, April 12, 2021) or both (June 9, 2021).

The landlord entered emails from four different tenants who reside in the residential property which all contain complaints about the conduct of the tenant and her guests.

Neighbour DV reported “blasting music and shouting all night” and cigarette smoke coming from the rental unit. He also reported that one of the tenant’s guests was sleeping in the hallway in front of the rental unit door.

Neighbour RML wrote that intoxicated friends of the tenant would yell and scream loudly at one another while in the rental unit or outside in the residential property’ parking lot after having been kicked out of the rental unit. She wrote that the tenant or her guests constantly chain smoked indoors, and that they have left empty liquor bottles and cigarette butts in the hallways. RML wrote that the tenant and her friends are “awake partying when I wake up for work at 4:00 AM”

Neighbour MW wrote that she had noticed a “really strong smell of cigarette smoke” coming from the rental unit.

Neighbour DL wrote that she lives in the unit next to the rental unit, and that since the tenant moved in she has “constantly smelled cigarette smoke”. She wrote that this was never an issue prior to the tenant moving in. She also wrote that in addition to the smoking, the tenant had constant parties at all hours of the night and that sometimes when she gets up for work at 6:00 am they would still be partying with music blasting, people yelling in the hallways, and constantly leaving beer cans and garbage in the hallway.

The tenant denied that she or her friends smoke in the rental unit. She testified that when they do need to smoke, they go outside to do so. She testified that the entire building smells of cigarette and marijuana smoke and argued that it was unfair for the landlord to attribute this all to her.

The tenant denied that neighbor DL lived in the unit next to hers. She stated that DL lived on the ground floor of the residential property. GS stated that the tenant is confusing DL with another occupant of the residential property whose first name sounds similar to that of DL. GS confirmed that DL occupied the unit next to the rental unit until July 31, 2021, when she moved out of the residential property.

The tenant denied that she or her friends would have constant parties in the rental unit until 4:00 am or 6:00 am, as alleged by some of her neighbours. She testified that she has a young son, and that having constant parties would not be conducive to his well-being. She testified that she does have three to four people over every other weekend (when her son stays with his father) for parties, and that these parties typically end

around 1:00 am. She admitted that they would play music and drink alcohol at these parties. She testified that police had been called on these parties several times, but that three or four of these instances were due to calls that she herself had made to have the police remove one of her friends for becoming too intoxicated and making too much noise. She testified that, despite having had to call the police to remove him from the rental unit, she continues to invite this individual back, because they are friends and he “just gets like that” when he has too much to drink.

The tenant denied that she or her friends left garbage or cigarette butts in the hallway. The tenant admitted that her friends, from time to time, would let themselves into the rental unit into the residential property when she was not at home. She was unsure if they banged on the rental unit door or disturbed other occupants of the residential property (as she would not have been there to witness it).

The tenant denied that any of her neighbors had ever raised the issue of her parties being too loud with her. She stated that all they would have to do is knock on her door and ask them to quiet down, and that they would. As this has never happened, she argued that she has not disturbed her neighbours at all.

Analysis

Section 47(1)(e) of the Act states:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
[...]
 - (iii) put the landlord's property at significant risk;

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party.

For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord must prove it is more likely than not that the tenant acted in such a way so as to meet the conditions set out at section 47(1)(e) of the Act.

Upon reviewing the documentary evidence submitted by the parties, and on hearing the testimony of the tenant and of GS, I find that it is more likely than not that the tenant unreasonably disturbed other occupants of the rental unit. Indeed, I come to this conclusion relying solely on the testimony of the tenant herself.

I find that having parties twice a month that last until 1:00 am, where music is played and alcohol is consumed, and which, on more than one occasion end with the tenant having to call the police to have one of her own guests removed for being too loud is a clear instance of an unreasonable disturbance.

These parties or the police's attendance are not isolated incidents. They are regular occurrences that the tenant facilitates, despite having received multiple warnings from the landlord (and presumably the police). I do not find it reasonable for the tenant, after having received these warnings, to continue hosting these parties. Her decision to do so shows a complete disregard for the well-being of her neighbours.

I find that these parties alone represent sufficient basis to end the tenancy. As such, I do not need determine whether the tenant has smoked in the rental unit, or if she or her friends left garbage in the hallways. I dismiss the tenant's application without leave to reapply.

Section 55(1) of the Act states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Notice complies with the section 52 form and content requirements. As such, I must issue an order of possession.

At the hearing, GS indicated that, if successful, the landlord would seek that the order of possession to be effective at the end of October 31, 2021. As such, I order that the tenant provide the landlord with vacant possession of the rental unit on or before October 31, 2021 at 1:00 pm.

Conclusion

I dismiss the tenant's application without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by October 31, 2021 at 1:00 pm.

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: September 22, 2021

Residential Tenancy Branch