



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Cause.

Both parties gave affirmed testimony at the Hearing.

It was determined:

- The Tenant served the Landlord with the Notice of Hearing documents by registered mail sent on August 5, 2011. The Tenant provided a copy of the registered mail receipt and tracking information in evidence.
- The Landlord posted copies of her documentary evidence to the Tenant's door on August 23 or 24, 2011. The Tenant acknowledged that he received them on or about that date, and stated that he was ready to proceed.
- The Tenant served the Landlord with copies of his documentary evidence by registered mail sent on August 19, 2011. The Tenant provided the tracking number for the registered mail.

Preliminary Matter

The Landlord's agent testified that the One Month Notice to End Tenancy for Cause (the "Notice") was hand delivered to the Tenant, with witnesses present, on July 26, 2011. A copy of the Notice was provided in evidence. The Notice indicates that it was issued on "August 26, 2011" for an effective date of "August 25, 2011". I questioned the Landlord's agent about the date that the Notice was issued and she stated that the Landlord has difficulty with the English language and wrote down the wrong month.

She also stated that at the time the Notice was issued the Landlord was grieving a death in the family.

Section 68 of the Act allows me to amend a notice to end tenancy if I am satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice. The Notice was served on July 26, 2011, and I find that the Tenant knew, or should have known, that it could not possibly have been issued on a future date and that in all probabilities the month was incorrect. I find that it is reasonable under the circumstances to amend the notice and I amend the date of issuance of the Notice to be July 26, 2011.

Background and Evidence

The Landlord's agent gave the following affirmed testimony and documentary evidence:

- The Landlord's agent stated that the Tenant is a hoarder and that he will not clean his suite to a reasonable standard. She stated that this is a health and safety concern because of mould and fire hazard.
- The Landlord's agent testified that recently the Tenant piled up boxes, furniture, cushions and garbage in the back alley which blocked the garage so that the Tenant's neighbours could not access their cars.
- The Landlord's agent testified that on July 24, 2011, the Tenant left a candle burning in the rental unit and then left the building for a couple of hours. She stated that this caused a fire and that the whole building and neighbouring building were in danger of catching fire. The Landlord's agent stated that this was not the first time the Tenant had left burning candles unattended.
- In evidence, the Landlord provided photographs of the rental unit taken after the fire department had attended, a letter from an insurance adjuster dated August 18, 2011 and an e-mail from the fire department's investigations division dated August 23, 2011.

- The Landlord's agent submitted that the majority of the remediation cannot take place while the Tenant is living in the rental unit.
- The Landlord's agent testified that the Tenant uses illegal drugs and that the rental property often smells of these drugs. The Landlord's agent did not identify what illegal drug she was alleging the Tenant was using.
- The Landlord's agent testified that the Tenant has jeopardized the Landlord's property and continues to put other occupants' wellbeing at risk. She stated that the smoke and water damage from the fire will require extensive and expensive repair including cleaning; drywall removal from walls and ceilings, replacement and painting; and removal and replacement of flooring. The Landlord's agent testified that her insurance deductible is \$1,000.00.
- The Landlord stated that most of the renovations are being delayed until the Tenant moves out, for safety reasons.

The Tenant and his advocate gave the following affirmed testimony and documentary evidence:

- This tenancy began approximately 15 years ago.
- The Tenant stated that he does not know what caused the fire and suggested it may have been a television overheating. He stated that the candle was on top of the television.
- The Tenant stated that damage to the rental unit was contained in the living room, and that it was mostly smoke damage.
- The Tenant's advocate stated that the Tenant is not disputing the damage, but testified that there are no smoke alarms in the building and submitted that the Landlord's negligence contributed to the damage.
- The Tenant's advocate submitted that the photographs provided by the Landlord were taken after the fire department had attended and that the dirt and disarray was as a result of the fire being put out.
- The Tenant's advocate submitted that there were no warning letters provided to the Tenant with respect to the state of cleanliness of the apartment prior to the

Notice being issued. She further submitted that two letters provided in evidence, dated August 15 and 16, 2011, should not be given any weight as they were written after the Notice was issued.

- The Tenant denies being a hoarder and stated that the articles he placed in the back alley were his water and smoke damaged furniture. He stated that he immediately pulled them away from the garage when he was asked to and that his neighbours do not use the garage for their cars.
- The Tenant provided photographs of the rental unit that were taken after the fire. The Tenant submitted that the photographs show that the rental unit is now clean. He stated that there were a lot of pizza boxes in the rental unit, but they are all gone now.
- The Tenant testified that he suffers from depression and that he occasionally smokes marijuana to ease his symptoms.

The Landlord's agent gave the following reply:

- The Landlord's agent stated that the Tenant has admitted to others that he has a hoarding problem. She submitted that the photographs submitted by the Tenant include a photograph of the kitchen, but do not include photographs of the living room, bedroom or bathroom. The Landlord's agent testified that the kitchen was cleaned by the restoration company, and not the Tenant.
- The Landlord's agent agreed that there are no smoke alarms in the rental property.
- The Landlord's agent asked for an Order of Possession.

Analysis

This is the Landlord's application and therefore the onus is on the Landlord to prove her claim based on the civil standard, the balance of probabilities.

It is important to note that the parties agreed that there are no smoke alarms in the rental unit. There was no evidence that smoke alarms are required under the City

Bylaws, however, the Landlord is warned that smoke alarms may lessen the damage and risk to other occupants by shortening the time that a fire is noticed and thereby shortening the fire department's response time. The Landlord submitted that the untidiness of the rental unit may have fueled the fire, but it is also possible that the presence of a smoke alarm may have lessened the response time to the fire and therefore the damage caused.

The Notice alleges the following reasons for ending the tenancy:

- The Tenant or a person permitted on the property by the Tenant has: seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and put the Landlord's property at significant risk.
- The Tenant has caused extraordinary damage to the unit or property.

Included in the Landlord's evidence is a letter from the restoration company setting out what work remains to be done as at August 19, 2011. This includes, but is not limited to, replacing a window and security bars; installing new insulation and vapour barrier; installing new drywall to walls and ceilings; installing new subfloor and carpet; replacing exterior door and hardware; and painting. The Landlord submitted that this work cannot be completed while the Tenant is living in the rental unit. I make no findings with respect to this submission. ~~This is not relevant to the Landlord's application, as the~~
This is the Tenant's application to cancel a One Month Notice to End Tenancy for Cause. The Landlord has not issued a Two Month Notice to End the Tenancy for Landlord's Use.

The Landlord provided a copy of an e-mail dated August 23, 2011, from the fire department's Investigation Division, which states that the fire was caused by "a **t.v. fire** in the basement of [the rental property]. The Landlord also provided a copy of a letter from the insurance adjuster which states: "The fire occurred by means of a **candle left unattended** for several hours. As a result of the fire, the entire basement suite sustained major damage and has been declared uninhabitable from the date of loss." It

is inconclusive from the evidence whether an unattended candle or the television was the source of the fire. If it was the television, then I would not find that the actions of the Tenant caused extraordinary damage. The Landlord has not provided sufficient evidence that the fire was caused by an unattended candle, and I find that this reason to end the tenancy has not been proven.

The photographs provided by the Landlord show a very dirty, cluttered rental unit however there is insufficient evidence that the Tenant is a hoarder. Though some of the disarray and dirt could be attributed to the fire and the attempts to put it out, I do not accept the Tenant's advocate's submission that all of the debris is attributable to putting out the fire. There are many pop cans, food packages and plastic bags/packing materials strewn about the living area. The floor area is almost completely covered by debris and clothing.

I find insufficient evidence that the clutter in the rental unit has seriously jeopardized the health or safety of another occupant or the Landlord, or put the Landlord's property at significant risk. There was no evidence that the Landlord had provided the Tenant with written notice demanding that he clean the rental unit. However the Tenant is hereby warned that he must comply with Section 32(2) of the Act, which states:

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The Tenant is hereby further warned that failure to comply with Section 32 of the Act may result in the Landlord issuing another Notice to End Tenancy for Cause.

The Landlord has not provided sufficient evidence that the tenancy should end for the reasons provided on the Notice and therefore I grant the Tenant's application to cancel the Notice. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Tenant's application is granted. The Notice to End Tenancy is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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 02, 2011.

Residential Tenancy Branch