



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel a 1 Month Notice Ending Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the tenant stated that he could not hear the proceedings; that he has a hearing impairment and needed to be able to present with the landlord and his witnesses, in order to understand what was being said.

In order to ensure a process that allowed the tenant to proceed with his application without delay the landlord checked with his witnesses and they were willing to accompany the landlord to the advocate's office, so that all parties could be in the same room while testifying.

The hearing was placed on hold, the landlord arrived at the advocate's office and the hearing proceeded so that the tenant could be in the presence of those speaking. No further concerns were issued by the tenant in relation to his ability to understand or hear testimony.

Issue(s) to be Decided

Should the 1 Month Notice ending Tenancy issued on October 7, 2011, be cancelled?

Background and Evidence

The landlord and the tenant agreed that on October 7, 2011, a 1 Month Notice to End Tenancy for Cause was issued and served on the tenant indicating that the tenant was

required to vacate the rental unit on December 1, 2011. The tenant applied to cancel the Notice within 10 days of receipt of the Notice.

The reasons stated for the Notice to End Tenancy were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The tenant resides on the 5th floor of a 6 floor building, with 11 rooms on each floor. The occupants have small cooking facilities in each room and bathrooms are shared. The tenancy commenced in April 2011; rent is due on the first day of each month.

The landlord testified that the tenant has engaged in cooking practices that place the other occupants at risk. Three events were outlined by the landlord and his witnesses in relation to the reasons indicated on the Notice ending tenancy.

The parties agreed that on August 6, 2011, the tenant used a Bar B Q in his room which resulted in attendance by the fire department. The Bar B Q was removed from the room and several days later the tenant was given a verbal warning that he must not use the Bar B Q again. The landlord agreed that the tenant has not used this method of cooking again.

On October 2, 2011, as a result of the tenant's cooking, the fire department again attended the 5th floor of the building. The tenant was refusing to keep his door closed, which led to a confrontation with another occupant. The police were called several times on this evening and, on the 2nd occasion the landlord's witness, M.S. found the tenant to be belligerent with the authorities. M.S. stated there was not a heavy presence of smoke, but the tenant was refusing to close his door to block the smell of smoke from going into the hall.

The tenant was given another verbal warning that he needed to be more attentive. The landlord was not sure if the tenant used a fryer or a hot plate, but believed that the tenant was not using safe cooking practices. The tenant had been asked to keep his door closed when cooking, as other occupants find the smell and resulting smoke aggravates conditions such as asthma.

On October 7, 2011, the fire department attended at the 5th floor as the result of the smell of something burning; the alarm had been activated. The police also attended. There was a dispute occurring between a number of occupants, which resulted in the police directing everyone to go back into their rooms.

The landlord stated that when the fire alarm signal is triggered they cannot determine if someone has pulled the alarm or if it has been independently activated due to smoke. The landlord confirmed that on at least one occasion on October 7, 2011, another

occupant had pulled the fire alarm, resulting in an unfounded assessment by the fire department.

The landlord stated that the fire department has indicated they believe the situation is unsafe. The landlord could not obtain any written reports from the fire department, due to freedom of information requirements. The landlord believes that there is a genuine fear for the safety of others in the building due to the actions of the tenant.

The tenant testified that he attempts to cook healthy food such as sausages and fish and that he has purchased a fan for use when cooking, in an attempt to have the odours and any smoke exit through the small window in his room. The tenant alleged that on October 2, 2011, the alarm was set by another occupant on his floor. The tenant believes that the occupants are unreliable and paranoid and will pull the alarm when they smell his food cooking.

The tenant alleged that on October 7, 2011, he was again cooking and that the other occupants bothered him. The tenant stated he saw another occupant pull the fire alarm and run from the floor of the building. The tenant stated he has never caused any burns or damage.

On October 7, 2011, the day after the tenant receive the Notice ending tenancy, he went to the fire department and had an inspector attend at his room. The landlord confirmed that the inspector did then come to see him and that the inspector indicated, on that date, there were no fire concerns present. The tenant testified that after meeting with the landlord, the inspector returned to his room, shook his hand and stated that the problems seemed to be related to other issues in the building.

Analysis

The tenant has have applied to cancel a Notice ending tenancy for cause issued on October 7, 2011; the effective date of the Notice is December 1, 2011. In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions and photographs submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health, safety or lawful right of the occupants of landlord; and/or
- put the landlord's property at significant risk

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

“To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others.”

I find that a significant disturbance would be one which was substantial or serious in nature and, that serious jeopardy must reflect a situation, as defined by ***Black's Law Dictionary***, that includes a “danger; hazard; peril.” In order to find that the tenant has engaged in activity that has placed the landlord's property at significant risk, I must find that the damage is substantial, serious and posed harm, danger or loss.

After considering all of the written submissions and testimony submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the landlord has cause to end the tenancy for the reasons cited on the Notice.

I have made this decision based on the absence of any evidence that the tenant has started a fire or actually placed the property or others at risk. There was no evidence before me that the fire department inspector believes a risk exists; no evidence of a health department order in relation to inadequate cooking facilities or cooking practices used by the tenant or any other evidence that the alarm is being triggered as a result of the tenant's cooking. Allegations and suspicions exist; but there was an absence of any assessment or evidence that the fire department authorities have concerns; have issued any warnings or made any submission that an imminent danger exists as a result of the tenant's cooking methods.

There was testimony that on at least one occasion another occupant pulled the alarm and this, combined with what I find appears to be conflict between the other occupants and the tenant, lead me to conclude, on the balance of probabilities, that the tenant's cooking may be an annoyance to others, but does not constitute an imminent threat. The landlord is unable to establish whether occupants are pulling the alarm, in frustration with the tenant's cooking, or if the alarm is triggered by the smoke from the tenant's cooking.

I find that the use of a Bar B Q in the room was clearly inappropriate and potentially dangerous, however; as this occurred in August, with no repeated use by the tenant; I find that the tenancy cannot be ended as a result of that one time breach of safety which occurred 2 months prior to the Notice being issued.

The tenant should be aware that his cooking does appear to be disturbing others; he is encouraged to keep his door closed when cooking, in order to avoid conflict that his open door causes.

Therefore, I find that the 1 Month Notice ending tenancy, issued on October 7, 2011, is of no force or effect. This tenancy will continue until it is ended as provided by the Act.

Conclusion

As I have determined that the landlord's have submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I set aside the One Month Notice to End Tenancy, dated October 7, 2011, and I order that this tenancy continue until it is ended in accordance with 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: October 31, 2011.

Residential Tenancy Branch