



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel a One Month Notice to End Tenancy for cause.

The tenant, her advocate and witness and parties for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. Neither party provided documentary evidence to the Residential Tenancy Branch or to the other party in advance of this hearing with the exception of a copy of the One Month Notice. All testimony of the parties has been considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to cancel a One Month Notice to End Tenancy for cause?

Background and Evidence

Both parties agree that this month to month tenancy started on May 01, 2009. The tenant pays a subsidized rent for her unit of \$375.00 per month due on the first of each month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause on December 29, 2011 by posting the Notice to the tenant's door on

December 29, 2011. The Notice has an effective date of January 31, 2012 and gives seven reasons to end the tenancy as follows:

- 1) 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,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk;
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (i) Damage the landlords' property
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) Jeopardized a lawful right or interest of another occupant or the landlord
- 3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testifies that the tenant has been seen throwing things from her forth floor unit window on different occasions. During the Olympics the landlord's security worker and maintenance man (DM) had reports from neighbours that the tenant was hanging out of her window and was throwing plates and dishes from her window. On another occasion the tenant threw a small television from her window which narrowly missed a person living in the building next door. On December 20, 2011 around 8.26 p.m. the landlords maintenance worker saw the tenant at her lit window and he testifies that the tenant throw an object from her window which shattered the glass awning of the building and then bounced off the awning.

The landlords maintenance men testifies that there was an occasion when he was painting a unit on the floor below the tenants when he saw the tenant hanging from her window naked saying she was going to jump. The maintenance man testifies that there were people in the street opposite taking pictures of the tenant. The landlord has concerns for the safety of the tenant, other tenants, neighbours and pedestrians walking in the street below. The landlord testifies that they do not have the services to deal with the tenant and feel she should be living in a building where more care can be offered to the tenant.

The landlord (CT) testifies that the Police have been called to the building at least 10 times because of the tenant's family members causing problems. The tenants sister was banned from the building by the police but the tenant has continued to allow her sister access to her unit. The landlord testifies the sisters then get into a fight. The tenant's sister was also seeing another tenant living in the building which caused problems and the tenant has complained that her sister harasses her.

The landlord (SH) testifies that the tenant has been given numerous warning letters about her behaviour. The landlord testifies that they did not get Notice of this hearing until January 13, 2012 so thought they did not have sufficient time to provide documentary evidence for this hearing. The landlord states they wish to replay on their oral testimony.

The landlord requests that the one Month Notice to End Tenancy is upheld and they seek an Order of Possession.

The tenants advocate states the tenants window opens from the top out and it would be difficult for the tenant to throw things from her window. The advocate also states as there is no ledge outside the tenants window it would also be unlikely she could be hanging out of the window. The advocate states this is the first he or the tenant have heard of these issues and the tenant has not received any warning letters from the landlord.

The tenant testifies that the landlord asked her to go to the office to discuss things with her and testifies the landlord said she was throwing things out of the window. The tenant testifies that she told the landlord she had stopped doing that and denies throwing out a television or breaking the glass awning. The tenant also denies standing naked at her window or threatening to throw herself out of the window.

The tenant's advocate states the landlord's maintenance worker testified he saw the tenant throw something from the window on December 20, 2011 and the tenants witness will contradict that. The advocate states if an object was thrown from the tenant's window and hit the awning it would still be there the next morning however nothing was found on the awning. The advocate states the tenants witness spoke to the maintenance man at 08.00 a.m. the next morning concerning this incident.

The tenant calls her witness EM. The witness testifies that he was with the tenant in her unit on the evening of December 20, 2011 from 9.00 p.m. to 9.00 a.m. the following morning. The witness testifies that the tenant did throw some chicken bones out of the window about 9.00 p.m. in the afternoon or night. The witness testifies that he saw the maintenance man the next morning when he left the tenants unit around 9.00 a.m. and the maintenance man told him the tenant had thrown a piece of broken glass out of her window.

The landlord testifies that the maintenance man's shift did not start until 12.00 noon the next day and the maintenance man testifies that he did not have a conversation with the tenants witness at 8.00 or 9.00 a.m. as he was not in the building. The maintenance man testifies that when he came on shift the tenants witness was sitting in the lobby when the witness mumbled something to the maintenance man about the tenant. The maintenance man testifies he did not engage in conversation with this witness but just walked away.

The landlord testifies that the tenant has letters on file about unreasonable conduct and agrees that the tenant was called to the office for a meeting. During this meeting the tenant admitted she had thrown objects from her window on December 20, 2011 because she was mad. The landlord testifies that the tenant was aware they were discussing the incident that occurred on December 20, 2011 because the tenant had brought with her the Notice she had been given by the landlord.

The landlord's maintenance man testifies that the tenant's windows have latches at the bottom which allow the window to be opened all the way up.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. I have based my decision on the oral testimony of both parties. I accept that it is likely that the tenant was sent warning letters by the landlord concerning her behavior in the building and the tenant did not take action to remedy her behavior despite written Notice to do so.

On a balance of probability I also find the landlords oral testimony more credible as the tenant and her witness both admit the tenant has thrown objects out of the window both in the past and on the night of December 20, 2011. In light of this I find the tenant's actions detrimental to the safety of other tenants, neighbors and pedestrians walking outside the building. I also find it is likely the tenants actions did cause damage to the awning and on a balance of probability I find the tenant did allow her sister access to the building after the Police had banned her sister from the building causing undue police activity in the building.

I find the tenants witness's testimony to be less than credible with regards to him having a conversation with the landlord's maintenance worker the next morning or if a conversation had taken place what value it would have on this hearing as the witness agrees the tenant did throw chicken bones out of the window.

I find the landlords evidence and that of the landlord's maintenance worker to be the more credible evidence in this matter and as such I dismiss the tenant's application without leave to reapply.

The One Month Notice to End Tenancy will remain in force and effect. However as this Notice was posted to the tenants door on December 29, 2011 it is not deemed to have been served until January 01, 2012. Consequently, the effective date of the Notice is amended to reflect this to February 29, 2012 pursuant to s. 53 (2) of the *Residential Tenancy Act*.

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession pursuant to s. 55 of the *Act* in favour of the landlord effective on **February 29, 2012**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: January 23, 2012.

Residential Tenancy Branch