



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OPR

Introduction

The hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The parties 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 to me. I have considered all of the relevant evidence and testimony provided.

Preliminary Matter

During the hearing, the tenant testified that her health has been negatively impacted since the installation of new carpet in the common areas of the building where she resides. The agents for the landlord confirmed the new carpet was installed in December 2011 and have not received other complaints regarding odour, allergies or other problems related to the new carpet. The tenant was advised that she could make a separate application if she felt the installation of the new carpet was impacting her health but that it was not relevant to the current hearing and would not be considered in my decision.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause (the “Notice”) be cancelled?

Background and Evidence

The landlord and the tenant agree that the Notice was served on the tenant on May 2, 2012. The effective date of the Notice indicates June 30, 2012. The reasons stated for the Notice were that the tenant breached a material term of the tenancy that was not corrected within a reasonable time; and that the tenant did not comply with an order

under the legislation within 30 days after the tenant received the order or the date in the order.

The agent for the landlord presented the following evidence and arguments to support the Notice:

The landlord conducts annual inspections of rental units to determine if any concerns exist. During an inspection in August 2011, several concerns were noted, including:

- excessive personal belongings which present a fire hazard and impairs ventilation
- ideal environment that provides harbourage for insects/pests
- offensive odour throughout the unit which is escaping into the hallway

The agent for the landlord testified in her 30 years of doing social work, she had never smelled a worse rental unit. In a letter dated August 26, 2011, the agent for the landlord notified the tenant that immediate steps must be taken to rectify the breach of the tenancy agreement. Article 5(b) of the Residential Tenancy Agreement was referenced indicating that the tenant must maintain ordinary health, cleanliness and sanitary standards throughout the residential premises and residential property. If the tenant does not comply with the above duties, the landlord may discuss the matter with the tenant and seek a monetary order through dispute resolution for the cost of repairs, serve a Notice to End a Residential Tenancy, or both.

The landlord provided until September 28, 2011, for the tenant to clean the rental unit and dispose of excess personal effects, otherwise the tenancy would be terminated. The landlord subsequently agreed to extend the September 28, 2011, deadline until October 21, 2011, to provide additional time to bring the rental unit up to an acceptable standard.

On October 26, 2011, the rental unit was re-inspected and it was determined that there was still excessive personal belongings which is of serious concern for the tenant's safety and that of staff and contractors who are required to carry out work at or near the rental unit. In a letter to the tenant dated October 28, 2011, there were also concerns specific to the environment being ideal for rodents and insects without proper ventilation and there was a strong odour emanating from the rental unit into the common hallway. An additional extension to correct the breaches was provided by the landlord, extending the next inspection until February 13, 2012.

In a letter to the tenant dated March 13, 2012, the landlord states that they attended the rental unit for the follow-up inspection accompanied by an Environmental Health Officer and Fire Safety Inspector from the local fire department. The landlord provided a copy of the Order issued from the local fire department dated March 12, 2012. The Order states to reduce the amount of combustibles in the rental unit due to the amount of clothing. In addition, they state to use proper bases for candles especially tea lights, effective immediately. The landlord stated that due to materials being stored inside the oven, the fire department ordered the breaker to the stove to be removed until the oven was emptied of its contents. The landlord also suggested that the tenant seek medical assistance to help her.

A total of 51 colour photos of the 600 square foot, one-bedroom rental unit were submitted as evidence by the landlord. Some of the photos show:

- Papers, books, clothing and other items stacked nearly to the ceiling in corners, hallways, along the floor, up the walls and in other areas;
- Storage containers overflowing with various items;
- A bathtub with dirt and other debris inside;
- A dirty refrigerator with items blocking the door preventing it from being opened fully;
- An outside deck area filled with various chairs and wooden structures; and
- A cabinet and other items next to a heater.

The agents for the landlord testified that to date, the landlord has not had any success in having the tenant correct the breaches of Article 5(b) of the Residential Tenancy Agreement despite providing reasonable time and opportunity to correct the breaches. Both agents for the landlord testified that the odour coming from the rental unit is worse than ever. As further evidence, the landlord indicated that painters working directly outside of the rental unit had difficulty painting the door frame of the rental unit due to the strong odour coming from inside the rental unit.

The landlord testified that there is no “pass” or “fail” in terms of a rental unit inspection. Rather, the purpose of the inspection is to identify any concerns that need to be addressed. If there are concerns found, the landlord will provide an opportunity for the tenant to address the concerns.

The tenant presented the following evidence and arguments in support the application to cancel the Notice:

In July 2011, the tenant passed an annual inspection but now has limited mobility issues which make it difficult to clean and discard items. The tenant agreed that there was an odour coming from the rental unit but that she has since corrected that problem by replacing her mattress and moving a chair to the outside deck. Due to her medical issues, the tenant is unable to get to the bathroom in time, which is the alleged cause of the odour.

The tenant testified that she had moved piles of items within the rental unit but did not confirm they were removed from the rental unit. When asked whether she had any assistance to remove excessive belongings, she indicated that she did not and that it was very difficult for her to move anything with her limited mobility. The tenant did indicate that half of her clothes did go to a second hand store in an effort to reduce the amount of clothing in the rental unit. In response to the bathtub photo, that photo was taken after the water in the tub backed up.

During the hearing the tenant indicated that she wanted to move, however, she would not be able to move until September or October of 2012. The tenant indicates in her application that the landlord's reasons are not justified as their interpretation of cleanliness is not reasonable.

Analysis

In determining whether this tenancy should end, I have given extensive consideration to the written, oral and photographic evidence submitted. Although a settlement agreement could not be reached during the hearing due to the proposed vacancy date by the tenant being too far in the future, the landlord did agree during the hearing that they would amend their possession date from June 30, 2012 as stated on the Notice and extend it to July 31, 2012.

With respect to the Notice issued by the landlord, I have based my consideration on the breach of a material term provision. I dismiss the issue of non-compliance with an order under the legislation within 30 days, as it is not a Director's Order. The Order referred to by the landlord in their notice is an Order of the local fire department.

However, in consideration of the breach of material term provision, Article 5(b) of the Residential Tenancy Agreement states:

Tenant's Duties:

The Tenant must maintain ordinary health, cleanliness and sanitary standards throughout the residential premises and residential property. The Tenant must take necessary steps to repair damage to the residential property caused by the actions or neglect of the Tenant or a person(s) permitted on the residential property by the tenant. The Tenant is not responsible for reasonable wear and tear to the residential premises.

If the Tenant does not comply with the above duties, the Landlord may discuss the matter with the Tenant and may seek a monetary order through dispute resolution under the RTA for the cost of repairs, serve a Notice to End a Residential Tenancy, or both. The carpets have been professionally cleaned for the Tenant's move-in. The Tenant will be required to have the carpets professionally clean on move-out, regardless of the length of tenancy.

With respect to the landlord's testimony as to the reaction the painters had to the odour emanating from the rental unit, I have noted that a painter was not called as witness so I have considered the statements from them to be hearsay and accordingly, of limited weight in my decision.

Section 47 of the *Act* states:

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

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Section 32(2) of the *Act* 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.

I find that the tenant is not maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit based on the written, oral and photographic evidence submitted, which includes, but is not limited to:

- 51 colour photos of the rental unit which indicate hoarding within the rental unit;
- testimony regarding the odour from the rental unit;
- a local fire department Order to immediately address the noted concerns;
- the general unsafe living environment as falling items from any of the tall stacks of items throughout the rental unit could impede access to exits in an emergency.

The tenant is required by both Article 5(b) of the Residential Tenancy Agreement and section 32(2) of the *Act* to maintain ordinary and reasonable health, cleanliness and sanitary standards throughout the rental unit and residential property. Of particular concern is the health and safety of the tenant and the other tenants in the building, given the obvious fire hazards that exist and the limited mobility of the tenant to navigate around and through the excessive personal items during an emergency.

The tenant had multiple warning notices and did not sufficiently rectify the breaches, even after several extensions to provide time to correct the breaches. Accordingly, I find the landlord has provided sufficient evidence to show that the tenant has breached Article 5(b) of the Residential Tenancy Agreement, a material term of the agreement and section 32(2) of the *Act*. I, therefore, dismiss the tenant's application to cancel the Notice.

Section 55 of the *Act* states:

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

Given the above and taking into account the landlord's oral request for an order of possession during the hearing, I find that the landlord is entitled to an order of possession effective at **1:00 pm on July 31, 2012**. This order may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

I have determined that the landlord has submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(1)(h)(i) and 47(1)(h)(ii) of the *Act*, and therefore, do not cancel the Notice. Based on section 55 of the *Act*, I order that this tenancy end at **1:00 pm on July 31, 2012**.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 23, 2012

Residential Tenancy Branch