



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a Notice to End Tenancy for Cause; and to order the landlord to make repairs to the unit.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?

Should the landlord be issued orders as requested?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on March 26, 2009 at a rent of \$815.00 per month.

The landlord testified that prior to issuing the notice to end tenancy she received 3 complaint letters from other occupants in the complex regarding noise. She said that the authors requested anonymity and therefore she did not provide the letters as evidence.

The landlord stated that on January 22, 2011 the tenants forgot to turn off the stove, which resulted in the fire alarm being triggered and the Fire Department to attend.

The landlord referred to the following written notices which she said were served on the tenants:

- February 8, 2012 request that the tenant replace a broken window in a bedroom. The landlord said the tenant only placed a plastic sheet to cover the hole.
- April 17, 2012 notice that the tenant destroyed the carpet and walls due to flooding in the bathroom, and noises disturbing other tenants. The landlord said that the tenant below called her because water was leaking into the suite. The landlord said that she went to the suite and found the bathtub nearly full, with water on the floor.
- April 22, 2012 notice concerning smell of drugs coming from the tenant's suite; ongoing visitors throughout day and night; noises disturbing other tenants; and the female tenant caught sleeping on the laundry room floor (photos provided). The landlord said that the female tenant smelled alcohol.
- April 27, 2012 notice concerning a witness who saw the female tenant moving furniture and placing it in front of the elevator, and noise complaints from other tenants.

In her documentary evidence, the landlord provided a copy of the 1 Month Notice to End Tenancy for Cause dated April 27, 2012, with an effective date of May 31, 2012. On page 2, the notice states for reasons that the tenant:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Put the landlord's property at risk.
- Damaged the landlord's property.

- Adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Jeopardized a lawful right or interest of another occupant or the landlord.
- Has not done required repairs of damage to the unit.

The landlord stated that she received a police report that logged 84 police service calls to the tenant's unit, but that the details could not be released under the Freedom of Information and Protection of Privacy Act disclosure provisions.

The tenant's agent testified that the tenant never received the February 8 notice concerning the broken window. The agent said that the window broke during a storm and that several requests were made to the landlord for repair as the tenant does not feel it is his responsibility.

The tenant's agent said that the bathtub did not cause a flood, but that a toilet leak was discovered as the culprit. She said that a plumber was called within an hour and the problem was fixed immediately. She said that the landlord's photographs of the suite below do not show evidence of a fresh leak, but rather a building up of gradual water deterioration consistent with a slow steady leak.

The landlord's agent said that both tenants are very ill and frail; she said that they have serious medical condition; that they take prescribed drugs; but that they do not use illicit drugs. She also said that their condition does not allow them to consume any liquor. She said that they do not have parties and that neither tenant have any idea of the nature of the noise complaints and cannot respond to this aspect of the landlord's allegations. Concerning the female tenant on sleeping in the laundry room, she said that the tenant has no recollection, partially due to her medical condition which causes her to fall often and lose consciousness. She said that even though the tenant does not recall the incident, she could not possibly have been intoxicated because the tenant does not drink.

In her documentary evidence, the tenant provided 5 letters from neighbours stating in part that other occupants and not this tenant were seen moving the furniture in question, and that the tenant has never caused any problems. The landlord's agent referred to a subsequent handwritten note from the original witness, stating that this female tenant was not the female he saw moving the furniture on April 27, 2012.

The tenant's agent referred to her April 26, 2012 letter to the landlord addressing in part the complaints subject to this dispute and the tenant's request for repair. The tenant's agent said that the landlord did not respond. She said that the tenant was not made aware of any problems until he received the landlord's April 17 and 22, 2012 notices, followed by the April 27 letter with the notice to end tenancy.

The tenant's agent said that the January 22 incident was caused by an act of omission; but that it did not cause a fire and that it was already resolved by the time the Fire Department attended. Concerning the police report of 84 service calls, the tenant's agent said that they are of little probative value because they do not disclose the nature of the calls.

The female tenant addressed the landlord and reminded her of a cordial conversation they had on mother's day; the female tenant asked why none of these concerns were addressed and why she told her that she would like her to stay, to which the landlord replied that she had to do what she had to do.

The tenant's agent said that the tenant asked the landlord several times to repair the unit's intercom system, which is an important feature due to their medical condition. Lastly, the tenant's agent asked that if I uphold the notice to end tenancy, that I consider extending the tenancy until July 1, 2012. The landlord said that she did not oppose extending the tenancy until that date.

Analysis

The landlord bears the burden to prove the grounds to end the tenancy.

The landlord identified a number of incidents; some of which may not be necessarily characterized as significant interference or serious jeopardy, given that they were isolated incidents. Further, I am not persuaded that they were characterized accurately; the flooding is unclear as to its actual cause, nor is the broken window; the fire alarm was caused by leaving the stove on however, given the passage of time I question its credence in these proceedings. These were isolated incidents, and they would fail if they were relied solely upon to meet the grounds to end a tenancy.

84 police service calls do bring a legitimate concern; however they were non-specific and failed to add material facts describing any breach of the Act by the tenant; and so was the case with the three complaint letters, which the landlord chose to withhold. While I do not dispute their existence, a fundamental doctrine of administrative fairness is the right to be informed of the allegations made against the accused party, and an opportunity to respond. The failure to release that information deprived the tenant of these rights.

Another concern is that the landlord did not provide the tenant with sufficient time to correct any concern with the tenant's actions; the evidence showed that as late as mothers' day, the tenant was not yet informed that a history of events starting from 2009 was being marshalled by the landlord build a case for issuing a notice to end tenancy, and in preparation for this hearing. The tenant ought to be given an opportunity to correct any problem, and I find that the tenant in this matter was also deprived of that opportunity.

Therefore, on the principle of administrative justice I find that the landlord did not establish the grounds to issue a notice to end tenancy.

Notwithstanding, every tenant in a rental unit owes a statutory obligation towards other's right to quiet enjoyment, including the landlord. The landlord has a duty of care and a right to enforce a tenancy pursuant to the Act. Repeated breaches by a tenant do not

prevent the landlord from issuing notices to end tenancy in the future or applications for dispute resolution, and the quantum of the evidence at that time may generate a different outcome.

Turning to the tenant's application for repairs; in consideration of serious medical conditions I order the landlord to repair the tenant's intercom unit by no later than June 30, 2012. If the landlord fails to comply, the tenant is at liberty to make an application for dispute resolution.

Conclusion

The notice to end tenancy is set aside and is of no force or effect. Accordingly the tenancy will continue.

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: May 24, 2012.

Residential Tenancy Branch